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THE
PARR AND SALMON
CONTROVERSY



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THE PARR & SALMON CONTROVERSY,

WITH

AUTHENTIC REPORTS OF THE LEGAL JUDGMENTS AND
JUDGES' NOTES IN THE VARIOUS LAW SUITS ON
THE PARR QUESTION,

AND ALSO

A BRIEF SKETCH OF SOME INCIDENTS CONNECTED WITH
THE DISSEMINATION OF THE MODERN PARR THEORY,

BY

HENRY FLOWERDEW,

*Author of the "Dundee Law Chronicle," and also of
"The Law Test."*



"The world the river is; both you and I,
And all mankind, are either fish or fry.
If we pretend to reason, first or last,
His baits will tempt us, and his hooks hold fast.
Pleasure or profit, either prose or rhyme,
If not at first, will doubtless take in time."

ISAAC WALTON'S BOOK.

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Parr and Salmon Controversy

THE subject of this work mainly relates to legal questions raised as to whether anglers are entitled to fish for and take what are called parr, without contravening the laws appertaining to salmon fishing. There is also involved the deeper question, whether parr, under the character of salmon fry, is entitled to a higher position than salmon—to be protected at all seasons and against all persons. The discussion will likewise embrace some practical points bearing on the out-door amusements and healthful recreation of the humbler classes of the community, as well as the general features of the piscatory art.

Probably the reader may discover, after finishing the perusal of the work, that it comprehends topics which highly concern, not merely anglers, but the public at large. Moreover, to an intelligent mind the proceedings of a Court of Justice are always worth a scrutiny, as they present, in an authentic form, the dealings in a country betwixt man and man, attest and explain laws and customs, and show how the

principles of law and equity are applied by the judges of the land. Last century almost all classes of society took an active interest in this description of literature, as may be seen from *Arnot's Reports of Criminal Trials*, from the year 1536 to the year 1784, where, among the lists of subscribers to the publication, may be observed English, Irish, and Scottish judges, barristers, nobility, landed proprietors, clergymen, medical men, attornies, and solicitors, and tradesmen of all grades. Lord Brougham, in his book titled the *British Constitution*, takes occasion to remark that the people, to be benefited, "must read for the sake of instruction, not for the momentary satisfaction of having their merriment excited or their spleen gratified," (p. 118). Lord Kames, in the 4th edition of his *Principles of Equity*, (Introduction, pages 27 and 28), dwells on the same subject, and insists on the benefit society at large would derive from the common people possessing a knowledge of those rational principles upon which law is founded. His words to that purpose are excellent words, and I will here set them down:—"Ignorance of law hath a most unhappy effect: we all regard with partiality our own interest; and it requires knowledge no less than candour to resist the thought of being treated unjustly when a Court pronounces against us. Thus peevishness and discontent arise, and are vented against the judges of the land. This, in a free government, is a dangerous and infectious spirit, to remedy which we cannot be too

solicitous. Knowledge of those rational principles upon which law is founded, I venture to suggest as a remedy no less efficacious than palatable. Were such knowledge universally spread, judges who adhere to rational principles, and who, with superior understanding, can reconcile law to common sense, would be revered by the whole society. The fame of their integrity, supported by men of parts and reading, would descend to the lowest of the people—a thing most devoutly to be wished. Nothing tends more to sweeten the temper than a conviction of impartiality in judges; by which we hold ourselves secure against every insult or wrong. By that means, peace and concord in society are promoted; and individuals are finely disciplined to submit with the like deference to all other acts of legal authority. Integrity is not the only duty required in a judge: to behave so as to make every one rely upon his integrity, is a duty no less essential.” The late Lord Justice Clerk (Hope) was equally anxious that the public should derive benefit and information from legal proceedings put into a *popular form*, when he, in 1858, in the case “*Fairholm v. Pringle and others*,” (*Court of Session Reports*), used these words:—“It is curious that the best and most authentic, and indeed the only connected evidence as to the fate of the Franklin expedition, is that which is afforded by the proof in this case, which would form a most deeply interesting pamphlet.”

Angling is an amusement confined to no particular

class of society—the peer and the peasant are equally zealous votaries. Sex forms no barrier—the woman of rank and the woman of the commonalty enjoy the sport. Age interposes no obstacle—the old, middle aged, and young engage in the same pursuit. It is an innocent pleasure, conducive to health, and salutary both for body and mind. Sir Humphrey Davy, a philosopher, a man of science, and very competent judge, gives a summary of the various attractions of angling, and the reason why it has not unfrequently been pursued with ardour by poets and philosophers. “The search after,” says he, “food is an instinct belonging to our nature; and from the savage in his rudest and most primitive state, who destroys a piece of game, or a fish, with a club or a spear, to a man in the most cultivated state of society, who employs artifice, machinery, and the resources of various other animals to secure his object, the origin of the pleasure is similar, and its object the same; but that kind of it requiring most art may be said to characterise man in his highest or intellectual state; and the fisher for salmon and trout with the fly employs not only machinery to assist his physical powers, but applies sagacity to conquer difficulties; and the pleasure derived from ingenious resources and devices, as well as from active pursuits, belong to this amusement. Then, as to its philosophical tendency, it is a pursuit of moral discipline, requiring patience, forbearance, and command of temper. As connected with natural science,

it may be vaunted as demanding a knowledge of the habits of a considerable tribe of created beings—fishes and the animals that they prey upon ; and an acquaintance with the signs and tokens of the weather and its changes ; the nature of the waters, and of the atmosphere. As to its poetical relations, it carries us into the most wild and beautiful scenery of nature, amongst the mountain lakes, and the clear and lovely streams that gush from the high ranges of elevated hills, or that make their way through the cavities of calcareous strata.”

The parr, which has principally originated the controversy in the Law Courts of Scotland, is described in these terms :—“ In the salmon rivers of Scotland, a small fish, having transverse dark marks across the back to the lateral line, is known under the name of the parr. By many observers it has been, and still is asserted that the parr is only the young or smolt of the salmon at a certain stage of growth ; some, on the other hand, regard it as a variety of the young of the common trout. It is the *salmo salmulus* of Willugby, and we believe, with Mr Yarrell and Sir W. Jardine, that it is a distinct species from either,—one of the smallest of the family ; and it is remarkable that, in those unprotected rivers from which poaching has driven the salmon, it abounds in profusion, as well as in some streams which the salmon never visit ; while in others, frequented both by the salmon and the sea trout, it is not to be found. Nor is it the young of the

common trout, from which it differs in various anatomical peculiarities. The young of the salmon, the bull trout, the common trout, and others, have dark transverse marks, which become lost sooner or later, depending on the ultimate size of the species. 'Thus,' says Mr Yarrell, 'they are soonest lost on the salmon and the bull trout, and are borne the longest on the common trout and parr. Indeed, I have never seen the parr at any age or size without some trace of the remains of these markings. It is this similarity in marking and appearance of the fry which has caused the difficulty in distinguishing between the various species when so young; and experimenters, believing they had marked young parr only, have been surprised to find some of their marked fish return as grilse, young bull trout or whitling, salmon trout, river trout, and true parr.' Mr Yarrell alludes to the young of other animals being marked, and ultimately losing markings which are prominent in other species of the family; thus, the young lion and the pumia are marked like the young of the tiger, and the young of all deer are spotted, though the greater number of the species when adult are plain. Formerly, when the water of the Thames was purer, the parr or samlet was common between Staines and Chertsy, and was known by the name of skeyger. It is now rarely to be found, and Thames salmon is out of the question."

The common trout (*salmo fario*) inhabits most of the rivers and lakes of Great Britain; but so consider-

able does it vary in appearance in different localities, as to lead to the *supposition that several species exist*. The gray trout, (*salmo ferox*), often called the bull trout or round tail, is distinguished from these by several specific peculiarities. The spawning season with the trout is generally October or November, but sometimes a little sooner or later. In this it differs from most other fish, who usually spawn in the spring months, and some in the summer. The trout is in perfection in the months of May, June and July. The salmon—which Izaak Walton styles the king of fresh water fish, (but which might be properly enough designated a cannibal king, devouring as it does its own offspring, and even the true parr, as the evidence adduced in the law cases, subsequently noticed, shows)—makes a furrow in the gravel, working with its snout against the stream; the female then deposits a number of eggs in it, and covers them up. By this process, in ten or twelve days the whole of the eggs are deposited. Supposing the eggs to be deposited early in November, they are hatched in March, or early in April, and the young fry exhibit a rapid growth. After spawning, the salmon begin their descent to the estuary, and so enter the sea, to commence their re-ascent in the autumn. A short time both before and after spawning, the male fish is orange or red, and the flesh of both male and female becomes hard and unpalatable; the *male* is then called a “*red fish*,” and the *female* a “*black fish*,” from its dark hue. (This

will explain some expressions in the preamble of the statute 9, Geo. iv., cap. 30.) Mr Buist, in 1831, (Perth, Dec. 16, 1831), writes that the salmon begin to spawn about the middle of October, and continue until about the end of January. The fry come to life in March, and disappear until they are seen in April about the size of parrs. At this era (1831) many practical fishers doubted whether grilse were the young of salmon—so Mr Buist says. Again, another writer in the same year complains that naturalists have not sufficiently attended to the fact, that there are *different kinds of salmon for each particular river*. This is literally making confusion worse confounded. (*Quarterly Journal of Agriculture*, May 1831.)

The special and technical information respecting the nature and habits of salmon and trout which goes before, has been derived from *Cassell's Popular Natural History*, volume 4th, a valuable work, which will well repay an attentive perusal of its whole contents. A thorough knowledge thereof would lead many people to treat animals with more kindness than they presently do. There are contained in the autobiography and correspondence of Mary Graville (Mrs Delany), edited by the Right Honourable Lady Llanover, some very pleasing incidents of the effects of kind treatment to the feathered tribe. "The robins fly to the doctor's hand for crumbs; one saucy fellow is fed with almonds, at which he pecks so long that his mate appears to see what keeps her husband,

when, with equal tact and gallantry, he crams her beak before she can scold him." The same results flow from kindness and consideration in human affairs; harmony and good fellowship are thereby rendered conspicuous. The following short note from Queen Charlotte to Mrs Delany, will more readily explain what is meant by kindness and consideration: "My dearest Mrs Delany, if coming to me will not fatigue your spirits too much, I shall receive you with open arms. Your affectionate friend,—CHARLOTTE."

It is very plain that legislators have a tangled skein in natural history to deal with when they undertake to legislate for the benefit of the Salmon Fishery Boards of Scotland. They would require to adopt a careful process of distinguishing before defining, the want whereof makes defining so extremely dangerous. The Tay Fishery Board, for instance, tried its luck first in the Law Courts, and being there foiled they sought the intervention of Parliament, as will be more fully explained in the sequel. It would be useless to doubt of the power of that august assembly to give redress, because Sir Edward Coke writes, that the power and jurisdiction of Parliament is so transcendent and absolute, that it cannot be confined, for either causes or persons, within any bounds. It hath sovereign and uncontrollable authority in the making, confirming, enlarging, restraining, abrogating, repealing, reviving and expounding of laws concerning matters of all possible denominations—

ecclesiastical or temporal, civil, military, maritime, or criminal. While, however, such is its omnipotency, it would be wise to remember Lord Treasurer Burleigh's pithy apophthegm, that "England could never be ruined but by a Parliament," implying thereby the judicious selection of subjects for legislation, with great circumspection in the handling thereof, and still greater thought and attention from those whose duty it is to embody them into Acts of Parliament, before receiving the royal assent. As Mr Warren writes, in his *Abridged Blackstone's Commentaries*,—"It is useless for the Legislature to speak unless it be rightly understood; and if, as unfortunately too often happens in modern times, it do not give itself leisure to use plain and consistent language, it taxes judicial ingenuity needlessly, and, by multiplying lawsuits, grievously oppresses those classes whom it so improvidently affects." This same subject appears to have attracted the attention of Lord Stanley, now the Earl of Derby. In his inaugural address in the Glasgow University in April 1869, his lordship observed, "Men live in haste;" and he went on to describe, in a vivid manner, "the life-long hurry which prevents us studying condensation." It would not be amiss for people in these days to adopt the great Lord Hales' motto, which he ordered to be engraved on the top of his staff, "*Festina lente*."

There has been a great deal of legislation connected with the preservation of salmon,—even the

Legislature has been asked to throw the shield of protection over trout. The plan, however, has not altogether proved efficacious. Some short time ago, when the telegraph wires were mischievously injured, the Postmaster-General made a wise and manly appeal in the public newspapers to the good sense and patriotism of the community at large; telling them the wires were public property, now that the Government had purchased the different telegraph lines, and that every person had an interest in protecting the wires and bringing to condign punishment wilful destroyers thereof. The appeal seems to have been heartily responded to, for outrages of the sort have entirely ceased. It is doubtful, if Parliament had been applied to, and had enacted penal legislation, that the evil-doers would have been so soon extinguished. So a like policy might be tried with the preservation of fish in the rivers of Scotland. The public might be appealed to to preserve the breed. If the different rivers and burns are placed in their primitive state, fish of all sorts will, no doubt, amazingly increase, and become food for the poorer classes to a much larger extent than at present prevails. So far as the humbler experts of the piscatory art are concerned—such as artisans and peasantry—they are often weighed down by large young families, provision for whom must be made. A man in that position, by taking his rod and line, and going to some neighbouring stream, may be able to make a fair ad-

dition to his otherwise frugal meal, and that without injuring the rights and privileges of any one.

In tracing upwards the different legislative enactments applicable to salmon, it may not be necessary to go further back than the 15th July 1828, when the statute 9, Geo. iv., cap. 39, was passed. The preamble of that statute is expressed as follows:—"Whereas, by an Act passed in the Parliament of Scotland in the year 1424, it was forbidden that any salmon be slain from the Feast of Assumption of Our Lady until the Feast of Saint Andrews, in winter; and whereas sundry other Laws and Acts were made and passed at diverse times by the Parliament of Scotland anent killing salmon, kipper, red, and white fish, in forbidden time, and the killing and destroying of the fry and smolts of salmon, which Laws and Acts were ratified, confirmed, and approved by an Act passed by the said Parliament in the year 1696, entitled, 'Act against killers of black fish, and destroyers of the fry and smolts of salmon;' and whereas it is expedient for the preservation of the Salmon Fisheries in Scotland that the penalties enacted by the said Act should be augmented, and the period of the forbidden time altered and extended, and sundry other regulations should be made.

"Be it enacted, by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in the present Parliament assembled, and by the authority of the

same, that the said Act passed in the year 1424 shall be, and the same is, repealed: And that no salmon, grilse, sea trout, nor other fish of the salmon kind, shall be taken in or from any river, stream, lake, water, or estuary whatsoever, or any part of the sea coast, between the 14th day of September and the 1st day of February in any year, by any person or persons, any law, statute, or practice to the contrary notwithstanding." Section 14th specially bears that the statute does not extend to England, or Ireland, or Berwick-upon-Tweed, or to the fisheries in the river Tweed, or of any of the streams or waters which run into or communicate therewith. There is not throughout the Act a more extended specification of fish than what is above quoted. The terms "red" and "black" will be understood by glancing backwards at the last portion of the material taken from *Cassell's Natural History*.

The next salmon statute, in direct order of time, claiming notice, is 7 & 8 Vict., cap. 95, promoted by the Tay Fishery Board. It was passed on the 9th August 1844, and bears special reference to 9 Geo. iv., cap. 39. There are circumstances connected with this statute of 7 & 8 Vict., cap. 95, requiring observation. A lawsuit, at the instance of Robert Buist, superintendent of the salmon fishings of the Tay, against a man of the name of Crawford, had been instituted before the Sheriff of Perth in April 1844, to have him subjected in the penalties set forth in

the 9 Geo. iv., cap. 39, for illegally catching salmon. The presiding judge found it proved that "whitlings" were the kind of fish caught, and there was no such fish described in the statute libelled on as whitlings, and declined to convict the defendant of the alleged crime laid to his charge. The law so enunciated is sound. Mr Justice Forster, so justly celebrated for his writings, lays down the rule thus:—"It may be laid down, as a general rule, that indictments founded upon penal statutes, *especially the most penal*, must pursue the statute so as to bring the party within it." A full report of the legal contest and judgment will be found in a subsequent page hereof. *The complainers acquiesced in the decision*, and did not appeal to the Justiciary Court under the powers given them by the statute under which they instituted the prosecution. The Sheriff's judgment was pronounced on the 19th April 1844. The *locus* where the offence was alleged to have happened was "on a towing-path by the river Earn." The prosecutors, instead of taking the opinions of the supreme judges of Scotland, went, in August 1844, direct to Parliament, and sought redress there. The preamble of the statute which they got (7 & 8 Vict., cap. 95) is expressed thus:—"Whereas an Act was passed in the 9th year of the reign of His Majesty King George IV., entitled 'An Act for the Preservation of the Salmon Fishery in Scotland:' And whereas it is expedient to prevent the destruction of salmon, or fish of the sal-

mon kind, in the sea or shores thereof : And whereas doubts are entertained of the provisions of the said Act being applicable to the sea or sea shore : Be it therefore enacted, by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same : That if any person, not having a legal right, or permission from the proprietor of the salmon fishery, shall, from and after the passing of this Act, wilfully take, fish for, or attempt to take, or aid or assist in taking, fishing for, or attempting to take in or from any river, stream, lake, water, estuary, firth, sea loch, creek, bay, or shore of the sea, or in or upon any part of the sea within one mile of low water mark, in Scotland, any salmon, grilse, sea trout, whitling, or other fish of the salmon kind, such person shall forfeit and pay not less than ten shillings, and not exceeding five pounds, for each and every offence," &c. There is a second, third, and fourth short section, providing for nothing therein derogating from 9 Geo. iv., and also for the preservation of the property of the Crown. Now the Sheriff never expressed an opinion that the Act 9 Geo. iv. did not apply to the sea and sea shore. It was the *fact* he expressed doubts about, hence the introduction into the new statute of "whitling," so as to render nugatory in all future time the Sheriff's judgment. It would not only have been a satisfactory, but a really constitutional course, to have made the

preamble of the statute bear some reference to the Courts of Law. If Parliament is kept ignorant in this respect, it may unwittingly be instrumental in rendering the decisions of the Courts of Justice throughout the country inoperative. Whenever a powerful and influential man, or body of men, feel dissatisfied with the adjudication of a matter or matters in the regular tribunals of the State, they may promote, and have passed through Parliament, a statute to frustrate the effects and natural working of the judgment. It may not be useless here to give an account of how Bills are passed through Parliament. Mr Warren, to whom reference has already been made, gives the information in these terms: "To bring in a Bill, if the relief sought by it is of a private nature, it is first necessary to prefer a Petition, which must be presented by a Member, and usually sets forth the grievance to be remedied. This Petition, when founded on facts that may be in their nature disputed, is referred to a Committee of Members, who examine the matter alleged, and accordingly report to the House; and then, or otherwise upon the mere Petition, leave is given to bring in a Bill. In public matters, the Bill is brought in upon motion made to the House, without any Petition at all; but there are many Standing Orders, relative to both classes of Bills, which must be strictly complied with, or a compliance specially dispensed with. Formerly all Bills were drawn in the form of Petitions, which were entered upon the Parliament Rolls, with the king's

answer thereunto subjoined ; not in any settled form of words, but as the circumstances of the case might require : and at the end of each Parliament, the judges drew them into the form of a statute, which was entered on the Statute Rolls. In the reign of Henry V., to prevent mistakes and abuses, the statutes were drawn up by the Judges, before the end of the Parliament ; and in the reign of Henry VI., Bills in the form of Acts, according to the modern custom, were first introduced. The enacting style of every Bill, as we have already seen, is as follows, and is now to be used but once, and at the commencement of each, (statute 13 & 14 Vict., cap. 21) : ‘Be it enacted by the Queen’s Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same.’ To a student of constitutional law, these words are pregnant with significance.”

Another source from which important information may be derived, relative to the formation of Acts of Parliament, is a pamphlet by Dr Barclay, Sheriff-Substitute of Perth, entitled *Curiosities of Legislation*. There are certainly strange and startling discrepancies related, and a few of these will be taken notice of. The account given by that gentleman of the manner of passing statutes is fully more plain and minute than Mr Warren’s. “The mode in which ‘Bills’—the progenitors of Acts of Parliament—are framed,

and pass through the Chambers of the Legislature, is open to great objection. A Bill is framed by a private person, called a draftsman—perhaps it is the first time he has tried his ‘prentice hand’ on law-making. He may be profoundly ignorant of common law, and of prior statutes. Two or three Members of the Commons’ House have their names endorsed on the Bill, as its foster-fathers or sponsors. But frequently this is no more than a form, as often the honourable Members are not acquainted with the details of the Bill, far less its effect on existing law. In fact, it is often, as bankers say, ‘indorsed without recourse.’ The Bill, being introduced to the House, passes through its various stages of the threefold reading and Committee. The Bill being printed, copies are sent down to counties, and, if not very lengthy, it finds a place in the newspapers. Important Bills are canvassed, and either opposed in whole, or in some clauses. Suggestions for improvements flow rapidly. The county and city Members, anxious to show attention to their constituents,—especially when the season for the dissolution of Parliament draws nigh,—communicate and urge these recommendations on those who are nominally intrusted with the progress of the Bill. This is often done without consulting the draftsman, and in ignorance of how it will amalgamate with the original clauses. The Bill, having passed through the crucible of the Commons, is sent to the Upper House, where two or three peers take the duty of nursing the legis-

lative babe. It has there to pass through similar stages; and parties who had not succeeded in obtaining favour for their *nostrums* in the other House, now press their suggestions with increased activity. New clauses are added, and former ones are withdrawn. Sometimes the two Houses come in collision, even upon some nice question of grammatical construction, on which Lindley Murray might be the most fitting tribunal." Again it is written, "If there be a want of superintendence in the progress of Public Bills towards maturity, much more does such exist in regard to Private Bills. Often in the statutes are found clauses inimical to public policy, to the liberty of the subject, and contrary to the clearest principles of justice. There are now, in the volumes of our Statute Book, nearly thirty thousand local, personal, and private Acts. Lord Brougham has remarked that private Acts of Parliament annually dispose of millions of property, compared with which all that the Courts of Law and Equity throughout the country dispose of, in the course of the same twelve months, sink into insignificance."

The inconsistencies of statute law take various forms. In an Act for rebuilding a county jail, it was enacted that the prisoners should be kept in the old building until the new erection was completed; but some economical Member had foisted in a clause that the stone of the old building should be taken to erect the new structure. There was an Act to regulate the trade

of the dye known as 'madder,' but there was an omission to use that word in any part of the Act, so it was utterly defective and unworkable. The Act of 13 & 14 Vict., cap. 26, as to piratical ships, was passed to come into operation on '*first* June next,' intended for 1850; but as the royal assent was not given until the 25th June, and the operation would have been suspended for a year, a short Act was hurried through the same session to bring the statute into retro-active operation, 13 & 14 Vict., cap. 26 & 27. The reader cannot do better than peruse the whole pamphlet itself. A good suggestion is made by Dr Barclay to cure the defects which presently exist. "*First*, That there be a Minister of Justice, under whose superintendence all legislation be carried through. This functionary should have a competent staff of legal assistants as experts, to whom would be entrusted the preparation and progress of all Bills intended to result in statutes. All suggestions adopted by either House of Parliament, and ordered to be incorporated into the statute, would be introduced by this body, who would see that they are not merely in harmony with the whole code of law, but consistent with itself and existing statutes. *Second*, That when any amendment of a statute is rendered necessary, the statute should be repealed, and renewed in an amended form; and thus the law for every specific object should be found in one statute, without reference to others of prior date."

The complaint, *Buist v. Crawford*, was based on the

Act 9 Geo. iv., cap. 39, and Crawford was charged with fishing in *the Earn*, on the lands of Elliot-head, the property of the Earl of Wemyss, "with intent to kill salmon, grilse, sea trout, or other fish of the salmon kind." There is nothing about fishing in the "sea or sea shore" libelled, nor any specification of "whitling." There were no grounds whatever for putting a preamble into the new Act 7 & 8 Vict., cap. 95, so far as the contest with Crawford went, expressed in these words—"Whereas doubts are entertained of the provisions of the said Act being applicable to the sea or sea shore." In fact, hardly any one would doubt for a moment the applicability of the terms 9 Geo. iv., cap. 39, to the sea or sea shore. Accordingly, fourteen years after the new Whitling Act was got, a prosecution was instituted, under and in terms of 9 Geo. iv., cap. 39, by Mr Galbraith, clerk to the proprietors of the salmon fisheries in the river Forth, against an angler of the name of Shaw. This case will be found fully noticed and reported at a subsequent page hereof. If the framers of the statute 7 & 8 Vict., cap. 95, passed 9th August 1844, and in which was inserted the species of fish called "whitlings," were asked who entertained doubts of 9 Geo. iv., cap. 39, being applicable to the sea and sea shore, they would find great difficulty in answering the question satisfactorily. To make the answer of any use at all, the doubts must have sprung from some judicatory, either supreme or inferior, and, as has already been noticed, they took good care that

no judgment of the Supreme Court should affect them or trammel them in the least from going to Parliament.

The Inferior Court judgment which sent them in such haste to Parliament, was as follows:—

PERTH, 19th April 1844.—Having taken evidence for the prosecution and for the defence, and heard parties' procurators,—Finds it not proved that the accused party, time and place mentioned in the complaint, was in trespass, with intent to kill salmon, grilse, sea trout, or other fish of the salmon kind: Therefore assoilzies him from the conclusions of the complaint, and decerns in his favour against the complainer for one pound of expenses, and the expense of extract. HUGH BARCLAY.

Note.—The complaint is laid on the third section of the Act 9 Geo. iv., cap. 39, which is in these words: "And be it further enacted, That if any person shall, after the expiration of two months from and after the passing of this Act, trespass in any ground, enclosed or unenclosed, or in or upon any river, stream, watercourse, or estuary, with intent to kill salmon, grilse, sea trout, or other fish of the salmon kind, such person shall forfeit and pay any sum not less than ten shillings, and not exceeding five pounds."

It was recently found at Perth Circuit (Lord Mackenzie) that this section was operative the whole year without reference to close or open season.

The prosecution of offenders under this Act is most summary and severe. Any person, without warrant, can seize another transgressing against the Act, and carry him before a Justice. Prosecutions are open to any person who may prosecute, and the offender is immediately brought before the Justice without any citation, or time to prepare for trial. There is no record of the evidence, and, of course, no appeal on the merits. If the penalty is not paid, imprisonment for any period less than six months may be awarded. Where the operation of the statute is so stringent, great care must be taken that it be not extended beyond its strictest letter.

The Sheriff-Substitute is of opinion that the plea in defence—that the accused was fishing on a towing-path by the river Earn, to which the public have right, and that the part of the river where he fished is not private property, but has been fished by the public for time immemorial—is not a good plea, if it were proved that the accused was fishing for salmon. The statute is to protect property in salmon; and unless the offender can show right to take salmon at the place charged, he is guilty of the trespass on that species of property.

But the Sheriff-Substitute rests his decision on the ground that whitlings, which, it is admitted and proved, were the only kind of fish the accused had taken, or was intending to take, are not distinctly proved to be of the salmon kind.

No better or sounder axiom of interpretation is known, than that penal statutes are rigidly interpreted; and where there exists a doubt, it must be given in favour of the accused. Neither must a statute be carried beyond, or restrained within, its clear intendment. If, in the progress of events, it becomes expedient to obtain a greater or lesser range, the Legislature must be had recourse to; and it would be unconstitutional and unsafe to leave such powers of extension or restraint in the hands of the magistracy.

The Act now sought to be enforced is entitled “for the preservation of the salmon fisheries in Scotland;” and after reciting sundry old statutes, the preamble is, that “it is expedient, for the preservation of the salmon fisheries in Scotland, that the penalties enacted by the said Acts should be augmented, and the period of the forbidden time altered and extended, and that sundry other regulations should be made.” There is no expression of intention to regulate other fishings than those of the salmon. In none of the old statutes, or in the decisions in reference to salmon fishings, has the Sheriff-Substitute been able to discover the name of whitling as falling under the property of salmon.

The statute, in the section under consideration, has the words, “salmon, grilse, sea trout, or other fish of the salmon kind.” In regard to the three enumerated species, there can be no doubt as

to the application of the statute ; but with reference to the general description appended, the Sheriff-Substitute is of opinion that the fact of other fish falling under the description of the salmon family, must be so clear and notorious, that there must be as little doubt in the public mind in reference to them as to the species enumerated. Accordingly, there can be no doubt as to "smolts," which, indeed, are expressly enumerated in other sections of the statute as the "fry of salmon."

The complainer maintained that whitlings were the young of the sea trout, and stood in the same relative situation to that fish as grilse are understood to do to salmon. On the other hand, the accused maintained that the whitling was a perfect fish, and in no ways connected with other tribes.

In support of his view, the complainer called two gentlemen, fishers of considerable experience, and who coincided in the opinion maintained by the complainer ; but the evidence of these gentlemen rested chiefly on the fact of the similarity of appearance of the two fish, and that the former were never found of any great size.

On the other hand, the accused called an operative fisher of sixteen years' experience ; a fish-hook maker, and accustomed to fish for forty years ; and two other amateur fishers of extended experience—all of whom gave their decided opinion in favour of the fact maintained in defence. One other operative fisherman, of great experience, gave his opinion with the complainer, that the whitling was the young of the sea trout, but he was equally positive that the sea trout was not of the salmon kind. None of the witnesses pretended to any scientific knowledge, but gave their opinion entirely founded on their own experience.

The complainer then produced a volume of the Naturalist's Library (1843) on British Fishes, by Dr Robert Hamilton. The Sheriff-Substitute has considerable hesitation in admitting such as legal evidence. It is merely the opinion of an individual, no doubt of high eminence, but not made evidence in the only way recognised by law. The writer states (p. 133) that what was at one time described by Pennant, Dr Fleming, Sir William Jardine, and other writers, as the white trout (*S. Albus*), "Inchtyhologists

are now agreed is nothing more than the salmon trout, after being for a time in the sea, and returning to fresh water; and in this state they are called herlings, or whitlings, sometimes phinocks." "Mr Shaw states that the young of the salmon trout, at the age of six months, bear no very marked resemblance to the young of the real salmon, either in the parr or fry state; and that as they advance in age and size, the resemblance becomes still lighter. Their resemblance to the young of the salmon trout is, however, very striking." Again, (p. 137,) "According to Mr Shaw, the young of the salmon trout and of the common trout are so strikingly alike, that it is extremely difficult to distinguish between them." It is thus seen that the certainty of the identity of the fish is a question of extreme difficulty.

But though the authority of the book were fully admitted, it does appear to the Sheriff-Substitute to prove too much for the complainers, as, under the *genus salmo*, there is placed by the author the salmon, the parr, bull trout, salmon trout, white trout or whiting, common trout, Lochleven trout, great lake trout, and the char. In short, there are very few fish known in our rivers, which, under this interpretation, are not included within the protection of the statute; and the classes not enumerated, but left to be guessed or proved, are far more numerous than the species named. In short, to give the Act the full interpretation contended for, would effectually convert it into "an Act for the *prevention* of fishing." It is thought that the Act of Parliament was intended to be read popularly, and not scientifically, nor to teach natural history. What may be popularly and notoriously held to be of the salmon kind, may have the protection of the statute under the general words of the law; but the Sheriff-Substitute cannot lend himself to countenance *ex post facto* law—first establishing, by proof, that the fact complained of is an offence, and punishing the party for that act done before such ascertainment. It may be well to give public instruction in natural history, but tuition under the infliction of fine and imprisonment is not the most likely to be productive of public advantage.

It is highly proper to preserve the valuable property in salmon,

and to prevent the destruction of the young, and especially of the fish at the spawning time, a practice at once destructive of the breed and detrimental to public health. But it is a matter for grave consideration, whether this protection is best to be obtained by *now* rigorously denying to the public what they have ever been accustomed to enjoy, because of recent conflicting and still doubtful opinions of naturalists, as to what precise tribe each member of the finny family belongs. H. B.

Act.—James Condie, Perth : *alt.*—George Clements, Perth.

The Tay Fishery Board, after being worsted in the foregoing action, Buist *v.* Crawford, lost no time in testing the efficacy of their new-acquired statute, or Whitling Act. In little more than four months after getting hold of it, they took an opportunity of flaunting it before the public eye, by suddenly swooping down on an unfortunate and uninformed angler, who happened to be amusing himself on the banks of the river Earn. Robert Buist, their superintendent, (the same person who sued Crawford), presented a complaint to the Sheriff of Perth, (the same Judge who decided Crawford's case), founding on the 1st section of the new Act, (*viz.*, 7 & 8 Vict., cap. 95, dated 9th August 1844), against Andrew Marshall, residing in Crieff. That angler, however, resembled the rest whom the Tay Fishery Board have had the good fortune to deal with. He was as warlike as they, and gained a complete legal victory. Thus ended for the time the fleshing of the new Parliamentary sword. A report of the suit, Buist *v.* Marshall, is here inserted. The Sheriff's note, attached to

his judgment, fully explains the facts and law. The charge made against Marshall was couched in these terms:—"For having, on the 1st day of February 1845, wilfully taken, fished for, or attempted to take, from the river Earn, salmon, grilse, sea trout, whitling, or other fish of the salmon kind, and that by means of a rod, tackle, and cleek, or otherwise, without having a legal right, or permission from the proprietor of the salmon fishings." The *locus* is the same as in Crawford's case, viz., the river Earn.

PERTH, 26th February 1845.—Having taken evidence, and heard parties' procurators thereon,—Finds it proved that, time and place libelled, the defender was fishing for salmon; but finds it not proved that he had no legal right or permission from the proprietors of the salmon fishing there: Therefore dismisses the complaint; finds the complainer liable to the defender in fifteen shillings of costs, for which, with the expenses of extract, decerns.

HUGH BARCLAY.

Note.—The question raised was one of law, whether the right or permission to fish for salmon at the place libelled lay with the defender to prove or the prosecutor to negative.

The defender alleged leave given him by the late Abercairney, and tacit homologation thereof by the present proprietor of the estate. But it was stated, on the other side, that the salmon fishings belonged to Lady Willoughby, and not to Abercairney.

The complaint is laid on the recent Act 7 & 8 Vict., cap. 95, which appears to be an amplification of the third or trespass section of the previous Act of 9 Geo. iv., cap. 39, and which is not repealed by the recent Act. By that section, "All *persons trespassing* on any ground, enclosed or unenclosed, or in or upon any river, stream, water-course, or estuary, with *intent* to kill salmon, grilse, sea trout, or other fish of the salmon kind, are made liable to a penalty of not less than ten shillings or more than five pounds."

By the recent statute it is enacted, "That if any person, not having a legal right or permission from the proprietor of the salmon fishery, shall, from and after the passing of this Act, wilfully take, fish for, or attempt to take, or aid or assist in taking, fishing for, or attempting to take in or from any river, stream, lake, water, estuary, frith, sea loch, creek, bay, or shore of the sea, or in or upon any part of the sea, within one mile of low water mark, in Scotland, any salmon, grilse, sea trout, whitling, or other fish of the salmon kind," shall be liable to the same amount of penalty as provided for in the third clause of the previous statute, with the addition of forfeiture of the fish, as well as boat and all other fishing implements.

The term trespass in the first Act implied the absence of "right" or "permission," but these words are especially mentioned in the recent statute.

The prosecutor stood on the general rule, that no party in law was bound to prove a negative.

For the defender, it was argued, that the offence is not *malum in se*, but *malum prohibitum*—that the party complained of must therefore be held to have a right to do what he was doing, unless the want of right was established—that the statute is a highly penal one, and must receive strict interpretation—and that the prosecutor must therefore allege and prove *all* that the statute requires to constitute the offence.

The rule appears fixed in England. "Where an exception *is in the enacting clause*, giving a right or forfeiture, the party suing for the right or forfeiture must negative the exception. (*Gill v. Scrivens*, 7 *Termly Reports*, 27.) But the same rule is not followed where the exception is not incorporated with the enacting clause by any words of reference (*Steel v. Smith*, 1 *Barwell and Anderson's Reports*, 94); or where it is a subsequent proviso (*Spiers v. Parker*, 1 *Termly Reports*, 194); or in a subsequent statute (*Rex v. Hall*, 1 *Termly Reports*, 320).

Accordingly, in the Day Game Trespass Act, 2 & 3 Will. iv., cap. 68, where "*without leave* of the proprietor" is incorporated in the penal clause, the 12th section expressly provides, that the "prosecutor is not required to prove a negative." Under that

Act, the proprietor or Fiscal can alone prosecute; whereas, in the Salmon Act, the prosecution is open to all who may inform. Similar provisions will be found in the Coining Act, and other statutes.

Accordingly, in England it has been held that, "in a conviction on the Game Acts, it required to be particularly and *negatively* specified that the defendant had not *any* of the qualifications required by the statute," (*Rex v. Jarvis*, 1 *Burrows*, 148); but the evidence need not negative *every* specific qualification, (*Rex v. Crowther*, 1 *Termly Reports*, 125).

The question still remains as to what *amount* of negative evidence is necessary to satisfy the statute.

It does not appear to the Sheriff-Substitute that it is necessary to produce a *full* proof, but only such evidence as may raise a reasonable belief of the *non-existence* of liberty, and that the defender was *in trespass*, leaving the defender to redargue the legal presumption hence arising.

Under the Hawkers' Act, 50 Geo. iii., cap. 41, section 7, a *general* proof that the person was not a householder in the place is declared sufficient. Under 42 Geo. iii., cap. 107, making it felony to course deer "*without consent of the owner*," it has been held that "proof of the non-consent must be given by the prosecutor, but that it was not necessary to call the owner himself to prove the negative" (2 *Campbell's Reports*). A contrary rule might impose an impossible proof on the prosecutor—*ex. gr.* where the owner is in foreign parts, or permanently disabled from giving evidence.

The Sheriff-Substitute, after examining the authorities, and consulting with the Sheriff, is of opinion that want of legal right or permission must be specially averred in prosecutions under the Salmon Act; and he recommends that the name of the proprietor of the salmon fishery should be given, or, if there be no such proprietor at the place, the name of the proprietor of the ground adjacent, and in this respect the present complaint is defective. He further is of opinion, that, if the proprietor himself is not examined, there must be some reasonable amount of evidence of no legal right or permission, by the examination

of the factor or steward, keeper or person to whom such leave would be communicated and made known.

It is thought that the offender may be called specially to plead to the existence of permission; and the non-existence, under a decision of Lord M'Kenzie on the previous statute, appears competent to be established by the defender's oath.

The statute is justified for the preservation of a valuable species of property, forming no inconsiderable item of national wealth, and which, where not granted to, or acquired by, proprietors, remains with the Crown. But where there has been so long and prevalent notions of the public right to fish with the rod in open season for salmon, and, especially, the lesser members of that family, and at places not under lease to fishers, great delicacy should be observed in executing the most stringent powers of the statute. Prosecutions in the Sheriff Small-Debt Courts, which are specially authorised, will be much more economical, and less harsh, than instant apprehension of the offender, which is a mode of procedure better suited for dealing with graver offences.

H. B.

Act.—Peddie & Mackenzie, Perth; *alt.*—John Kemp, Perth.

The Tay Fishery Board, perceiving the weakness of their new Whiting Act, bethought themselves of again calling in Parliamentary aid. They lay on their oars for a very considerable time—even until 1862. Then a new Salmon Fishery Act was passed by Parliament, bearing date 7th August 1862, and under which they went to work as vigorously as of old to catch anglers as well as fish. A number of fish are enumerated in that statute which have no pretensions to royalty. Salmon is a royal fish—fishing for it can only, as a legal right, be conferred by a *special grant of the Crown*. Hence even the clause, *cum piscationibus*, in royal charters, is not held to con-

vey a right of salmon fishing. Can as much be said for "sea trout," "bull trout," and "parr?" Before, however, describing in detail their new tactics, it is proper to show the estimation in which the Whitling Act was held by other fishing boards. This is seen by a lawsuit, *Galbraith v. Shaw*, which proceeded before the Sheriff-Substitute at Dunblane in the year 1858—that is no less than fourteen years after the passing of the Whitling Act, which, as already observed, is dated the 9th August 1844. Well, Mr Galbraith, as "clerk to the proprietors of the salmon fisheries in the river Forth and its branches," presented a complaint against Andrew Shaw, labourer, residing near Woolmill, Dunblane, for having, "contrary to the provisions of the Act of Parliament of 9 Geo. iv., cap. 39, sec. 4, wilfully taken by some means in or from the river Allan, below and near to the railway bridge across the same, near the Cathedral of Dunblane, and county of Perth; or there wilfully had in his possession, on Thursday, the 1st day of October 1857, certain smolts, or fry of salmon, or other fish of the salmon kind." Here, it will be seen, the Whitling Act is entirely passed over. It is shunned, apparently, for its inefficacy, and resort is had to the old statute, 9 Geo. iv., cap. 39. The report of Galbraith's case here inserted is very complete, and the proof led in the action is given at length, to show how dangerous it is for Parliament to be every now and then adding this fish and the next fish to *penal* statutes

to gratify the whim of a few avaricious, speculative zealots. An Act which will protect the *salmo salar* when in season and when out of season, and the true young of that fish, is all that can reasonably be asked, and all that should be conceded.

The name "parr," in the new Act of Parliament, is calculated to mislead, in as far as there are more than one kind of parr. There are true parr, and trout parr. In the old statute of 9 Geo. iv., cap 39, the true young of the salmon are designated as "fry" and "smolts;" the first term apparently used because the true young of the salmon, in early age, are gregarious in their habits, keeping altogether in a body; and the second term seems to be adopted to distinguish them when they put on a white or silvery coating, at a more advanced stage of their existence, which covering entirely disappears as they get older, and make their appearance in Lunan Bay.

As long as the controversy was confined to newspapers and periodicals, the lieges could suffer no injury in their persons or property; but the aspect of things is totally changed when penal statutes come into play against them. Englishmen, Irishmen, Americans, and tourists from the Continent, all occasionally ply their rods in Scotch streams, and may be suddenly seized by river watchmen, and policemen, for having these small fish called parrs in their possession, and be subjected to fines and imprisonment.

DUNBLANE, 20th January 1858.—Having heard evidence in support of the complaint and defence, and heard parties thereon—Finds it not proved that the defender had, time and place libelled, wilfully taken from the river Allan, or then wilfully had in his possession, any smolts or fry of salmon, or other fish of the salmon kind: Therefore assoilzies him from the conclusion of the complaint: Finds the complainer liable to the defender in five pounds of costs, for which, with the expenses of extract, decerns.

JOHN GRAHAME.

Note.—The present case has arisen under the 4th section of the Act of 9 Geo. iv., cap. 39, which is one of what may be termed “The Salmon Protection Acts.” The complaint, which is made by the complainer, not at his private instance, but in his character of “Clerk to the proprietors of the salmon fisheries in the river Forth and its branches,” sets forth that, contrary to the provisions of the statute, the defender had wilfully taken, by some means, in or from the river Allan, below and near to the railway bridge across the river, near the Cathedral of Dunblane, in the parish of Dunblane, and county of Perth, or then wilfully had in his possession, on Thursday the 1st day of October 1857, certain smolts or fry of salmon, or other “fish of the salmon kind.”

To this complaint the defender has set up a twofold defence—*First*, That the fish he had then taken from the river Allan, and had in his possession, were not “fish of the salmon kind,” but fish of an altogether different species: and *Secondly*, That even admitting that the fish in question should be established by the complainer’s proof to have been “of the salmon kind,” the defender’s ignorance of that fact, and his consequent *bona fides*, entitle him, in the circumstances of this case, to be assoilzied from the penal conclusion of the complaint.

The questions, therefore, which the Sheriff-Substitute is now asked to determine are, whether the complainer has proved beyond a doubt that the said fish were really “of the salmon kind,” and whether the defender was aware, or must legally be presumed to have been aware, of this fact when the fish were taken by him, or found in his possession. It is not enough, in such a

case as the present—which is laid upon a penal statute—that the complainer should prove that his view is more probably correct than that of the defender. He must do more. His proof must be such as both to exclude all possibility of any doubt as to the soundness of his conclusions, and to establish a legal obligation on the part of the defender to have been aware of their soundness. This is a case in which the legal maxim *ignorantia juris neminem excusat* has no force. That maxim is applicable only to cases in which a plea is attempted to be founded upon ignorance of the legal consequences of certain admitted facts, and it has no application to cases in which, not the inference to be drawn from the facts, but the alleged facts themselves, are of a doubtful character. The maxim is one on which the complainer would have been entitled to found, had the defender pled mere ignorance of the legal consequences of fishing for, or having in his possession, “fish of the salmon kind.” This, however, is not what he now pleads; but he states as his defence, (and it is a relevant one), not only that he was ignorant, but that in the circumstances he was legally entitled to be ignorant, of the said fish being “of the salmon kind.” The plea thus raised is preliminary to any question as to the real merits of the case. By this plea, the defender, assuming the truth of the complainer’s allegations as to the true character of the fish in question, undertakes the obligation of proving that his ignorance of their alleged true character was such as was natural and lawful to him under the circumstances, and that all idea of any *mala fides* on his part being thus excluded, he cannot be held to have brought himself under the application of the penal sanctions of the statute. To the consideration of this plea, therefore, the Sheriff-Substitute will now proceed. It affords, he thinks, a sufficient ground for the decision of the present case, and, moreover, relieves him of the very onerous obligation of determining the absolute truth of the respective views advanced by the complainer and defender as to the true character of the fish in question.

Although the merits of what may be called the different *parr* theories have been very fully investigated, and ably discussed by the agents for the parties in the present case, the Sheriff-Substitute

thinks that such questions are very inappropriate for discussion in a Sheriff Small-Debt Court, or before any legal tribunal. The decision of such questions is more proper to the professorial chair than the judicial bench. It is not the province of any judge to decide a pure question of natural history, and legal tribunals have always been very jealous of entertaining such questions. Upon this point the Sheriff-Substitute cannot do better than refer to what was stated in a note to a decision of Sheriff Barclay, at Perth, in April 1844, in a case kindred to the present, and founded upon the third section of the same statute as that on which the present complaint is laid. In that case penal conclusions were urged against a party in respect of his having, in the river Earn, been fishing for, and taken therefrom, the fish called the whitling, and which fish, though not specially mentioned in the Act, was yet alleged by the complainer to be comprehended under the general expression, "fish of the salmon kind." The learned Sheriff-Substitute, in that case, refused to give weight to mere scientific evidence as to the true character of the whitling, stating that "the Act of Parliament was intended to be read popularly, and not scientifically, nor to teach natural history. What may be popularly and notoriously held to be of the salmon kind, may have the protection of the statute under the general words of the law; but the Sheriff-Substitute cannot lend himself to countenance *ex post facto* law—first establishing, by proof, that the fact complained of is an offence, and punishing the party for that act done before such ascertainment. It may be well to give public instruction in natural history, but tuition under the infliction of fine and imprisonment is not the most likely to be productive of public advantage." It may be well to add, that, since the judgment now referred to was pronounced, there has been passed an Act—the 7 & 8 Vict., cap. 95—in which the whitling is specifically mentioned as entitled to the protection afforded by law to the other recognised "fish of the salmon kind." If the complainer has full confidence in the truth of his view as to the character of the parr, his proper course is to apply for an Act in which the parr shall be expressly included. If he does not feel himself in a position to render it probable that such an application would

be successful, he is still less in a position in which he can cherish any legitimate hope of succeeding in his present action.

The complainer cannot pretend that it was the intention of the Act on which he founds, at the time of its enactment, to include the fish called parr as a "fish of the salmon kind." In none of the numerous and very severe Scotch Acts passed for the protection of salmon previously to the passing of the 9 Geo. iv., cap. 39, has the Sheriff-Substitute been able to find any reference whatever to the parr as being a "fish of the salmon kind;" and at the date of the passing of that statute there was certainly no general opinion favourable to the identity in species of the parr and the salmon. Most of the witnesses whom the complainer himself called to support his view of the true character of these fish, stated that the origin of their opinions dated no farther back than the date of the first Stormontfield pond experiments, four years ago, and that, previously to that date, their opinion had been that the fish called a parr was not a "fish of the salmon kind," but a fish of an altogether different species. The year 1839 is the earliest date at which, according to the evidence adduced in the present case, there was any decided expression of opinion as to the parr being a "fish of the salmon kind." In that year there was communicated to the Royal Society of Edinburgh, a treatise, by Mr Shaw of Drumlanrig, entitled, *Account of Experimental Observations on the Development and Growth of Salmon Fry, from the Extrusion of the Ova to the Age of Two Years*; and in this treatise the identity in species of the salmon and the parr was announced by Mr Shaw as having been, if not then for the first time discovered, at least for the first time then clearly proved and demonstrated. But whatever may be the truth of the conclusions arrived at by Mr Shaw, their announcement by him does not appear to have led to anything approaching to that general unanimity of sentiment, the proved non-existence of which affords the defender a good ground of defence in the present action. However correct the conclusions of Mr Shaw may be assumed to be, the evidence led by the defender has proved that in many, if not all, of the more popular works on natural history which allude to the parr question, and

to which a person in the defender's circumstances may naturally be supposed to have the most easy access, the opposite opinion is most distinctly stated. The supporters of Mr Shaw's views have, in the present case, been chiefly referred to by the complainer as having given expression to their opinions in some learned articles in the *Encyclopedia Britannica* and *Quarterly Review*, and the necessity under which the complainer evidently felt himself laid, in his argument at the debate, of so largely, if not exclusively, referring to and quoting from these and similar works, affords a strong presumption against the conclusion prayed for in his present complaint. The defender is, by a strong but necessary fiction of law, presumed to be acquainted with all the statute law of his country; but it would be going rather too far to presume his knowledge of the experiments detailed, and his belief in the opinions put forth in the *Transactions of the Royal Society*, the *Encyclopedia Britannica*, or the *Quarterly Review*.

The defender must naturally be presumed to be more familiar with the experiments which have been made, or are now making, at the Stormontfield ponds, than with those made by Mr Shaw, of Drumlanrig; but still the Sheriff-Substitute does not, in the evidence led by the complainer in support of the trustworthy and decisive character of these experiments at Stormontfield, find a sufficient ground for giving effect to the conclusion of the present complaint. He has, however, to express the hope that, in these or some similar experiments, there will yet be found a complete solution of the difficulties that lie in the way of a generally recognised settlement of the parr controversy. In the meantime, he cannot hold that the circumstances of this case, arising, as they have been proved to have done, from the justifiable ignorance or scepticism of the defender as to the truth of what the complainer alleges to be the true parr theory, afford a sufficient reason for the infliction of any penalty whatever. J. G.

Act.—William Galbraith; *alt.*—John Maclean.

[It was once a moot point in the Highlands of Scotland whether *fishers* were *slaves*, and bound to the soil where they were born. The question was gravely discussed in a Court of Law. Of course it was before the 19th April 1791, when Mr Wilberforce made his

celebrated motion for the abolition of the African slave trade. The discussion on the slavery of the fishers, if not so eloquent as that on the slavery of the Africans, at least points a moral. See Reid, Beverly, &c., *v.* the Laird of Woodney, &c., 31st July 1696, Morr. 4427, where the Lords of Session found the laird's endeavour to introduce slavery *corruptela* and unlawful. It will be a good long while before the would-be slaveholders of parrs find out the birth-place of those fish, or their affinity to the salmon species, in such a way as to carry conviction to the mind of the merest tyro in Walton's art. Boys at school know that they have scores of times caught parr where salmon were never seen, and in places where it is impossible they could have ever reached. Mr Stoddart speaks of "trolling with *parr* for large trout" in the Highland lochs, which indicates that he had no conception that he was injuring the breed of salmon by using the young of that species to bait his hooks for catching trout. It may, too, fairly be presumed that he was equally oblivious to incurring the penalties under the salmon protection statutes. The above claim of right to parr, as a species of salmon, is entitled to as much favour, and stands in as good a light, as the claim urged by the Procurator-Fiscal of the town of Stirling against John Gillies and others, 20th November 1793, F. C. vol. 10, p. 159, where an attempt was made to bring into operation an old obsolete salmon statute against some poor men in the neighbourhood of Stirling, but which endeavour the Courts of Law frustrated.]

NOTES OF EVIDENCE.

PURSUER'S PROOF—FIRST DAY.

JAMES MATHIE.—I am superintendent on the Forth and its branches. The river Allan is one of its branches. On the 1st October I was on the Allan near Dunblane. It was a Thursday. A man named Henderson was with me. Near the railway bridge I saw the defender fishing with a rod and line. I asked to see

what fish he had, and he showed me some, among which were twenty parrs. I am sure that they were parrs. I consider the parrs are the fry of salmon, and believe they are the produce of the first year. The parr is the first stage of the fish after the depositing of the ova. Parrs sometimes remain more than a year in the river after they are hatched. They then become smolt, with a silvery skin, and in that state descend to the sea. When a smolt is stripped of his scales, it is a parr below. November and December are the usual times of salmon spawning. The ova remain four months, and then parr is produced. This generally takes place about April or May. Since 1st October I have seen parr taken out of the Allan near the railway bridge. I produce some so taken; they are the same kind of fish as I found in defender's pockets.

Cross-examined.—I am a watcher on the Allan, and in the pay of the pursuer. I am paid wages at so much the season. I get nothing for catching poachers. I brought the fish that I took from the defender home, and gave them away. I showed them to my son, but to no other person so far as I remember. I did not cut up any of them. Along with the parr I took from the defender, were one or two yellow trouts. My reason for saying that the fish I got were parr is, that parr are got where salmon have access to. I know the Castle of Kilbryde. I do not know that smolts have been got above the rock at Kilbryde Castle. I have ripped up a parr, and have found both milt and roe. It is considered that the male parr has mature milt. I know that the spawn remains four months. This I know from examining a bed of spawn. I know that the parr continue a year after being hatched, from what I saw at Stormontfield. The parr there were in ponds, and I have found there that the parr became a smolt the year following. Parr have never been got in the salmon fishing nets in the river Forth. I can't say that the smolts I saw at Stormontfield were the same parr I had seen the previous year. I examined the Stormont ponds carefully. The inlet to the ponds is very small, but I can't tell whether parr could get through or not. I can't tell from the size of the parr how old it is. The parr becomes a smolt about March or April.

I can't swear that the parr I have produced are one, two, three, four or five years old. I now open one of the parr produced, and find no milt; I therefore conclude it is a female parr. I find no roe in it. I open another. I think it is a female also, for it has no milt. I can't, by looking at them, say that any of the fish produced are male fish. I have seen parr with the milt. I have not seen the female parr with spawn at all. The male parr will spawn, or, as I mean, have milt the first year of its existence. I don't think the female parr spawns the first year. I am not much acquainted with parr. I am not a parr killer. I know that in the river Allan parrs are now coming up in thousands, but they do not come from the Forth. They are travelling backwards and forwards. I can't swear upon my own knowledge that parrs ever go to sea. I mean to say, they do not go to sea as parr. I have seen smolts going to sea in shoals. I won't swear that I ever saw parr going down with them. I have often stripped a smolt of its scales, and found a parr below. I can't tell the age of any smolt I saw experimented upon, but I think I have made the experiment in the month of May. I can't tell how long is the existence of a smolt. It comes back the same year from the sea as grilse or trout. I can't positively say it was the month of May I made the experiment. It was not in November or October. I have seen smolts very small—as small as any of the parr now produced. I don't know that the mouth of the smolt is very tender, or more so than the mouth of the parr. When the smolt goes to sea it is from three to four inches in size. I know nothing about the anatomy of the salmon.

Re-examined for Pursuer.—Smolts are of different sizes, like trouts and grilse. Smolts return as grilse or trouts the first year, but they do not return as salmon the first year. Wherever salmon are got, parr and smolts are likely to be found. I am a practical fisher. I know that smolts are found in the salmon fishing nets in the Forth, but I never saw parr there, and therefore I conclude that parr do not go down as far to the sea. The inlet to the ponds at Stormontfield is from the lade, and the water goes through a filter. About April or May, smolts go down the Allan in great quantities, but I never see parr going down. Parrs

are in the river at that time in great quantities. The river Forth is not a spawning river till above Gartmore. The Teith and Allan are spawning rivers.

Re-examined for Defender.—I have often stripped smolts. The scales did not in all cases come off equally easy. I am sure that some of the smolts so experimented on appeared parr below. They had all the marks of a parr. I can't say that the smolts so experimented on were not two years old, I can't say what was the age of the smolts, but I know they were one year, because they can't be smolts till they are a year old. I never saw smolts and parrs mingling together in the river. I do not think that parr ever get higher than salmon; but wherever salmon spawn, parr are likely to be found. The lade into Stormontfield pond comes off the Tay. Salmon eat parr, and take it as bait.

JAMES HENDERSON.—I am one of the watchers on the Forth and Allan, and have been so for many years. I was with Mathie on 1st October. I was with him when the defender was found fishing. I am sure twenty parrs were taken from him. Yesterday I saw fish taken from the same place. Those now shown to me are like those I then saw taken, and they have the same appearance as those taken from defender.

Cross-examined.—It was James King who caught the fish yesterday. I was with him at the time. Mathie took them away. Those now shown to me are parr.

THOMAS RUTHERFORD.—I am water bailie on the Tay. I have been twelve years in the situation. I am well acquainted with the habits of salmon, having been a fisher from sixteen years of age. The fish now shown to me are salmon parr. Fish spawn in November. The period between the depositing of the ova and the coming out of the fish is 130 days. They are then small parr, with the egg about them. They remain so six weeks, and then begin to feed. They vary in size. Sometimes they continue two years as parr, sometimes one year. They do not go to the sea as smolts till about April or May—they then get their silver coat. If that coat is rubbed off, the parr appears below. I never saw any parr going to the sea. Sometimes the smolts return as grilse in seven weeks, four pounds in weight. This is the earliest return

I know of. They never return as salmon the first year. I have seen them return as grilse the second year. I formerly held the opinion that parr and smolts were different fish. I changed my opinion four years ago. My experience of the ponds caused me to change my opinion. The water of the pond is all filtered, and no fish can come in. There are also small zinc sieves. What is produced in these ponds is from the ova of salmon and grilse. The produce in the first stage was parr. Before the first year was over there were no smolts in the ponds. I have no doubt the fish now shown to me were parr.

Cross-examined.—The peculiar marks of the parr are cross bars on both sides of the body, and a black spot on each side of the gills. They have not always the same number of marks—at least I don't know. I can't tell the usual number of such marks. I never counted them. Fish get into the sea from the Stormont ponds, but no fish can get up. The opening is made for a few minutes at a time to let the fish out. It is quite impossible other fish could get into the pond. A number of the parr were marked when they became smolts, and we got some of them back. Parrs have been marked, but we never got these in the same year except as parr. We have got back marked smolts in the same year. We mark the fish by cutting the fin. The fin of a fish does not grow. I can't say whether fish are marked in other places. It was generally believed that the fish we got back were the fish we marked. I don't think that they were other fish. We have got a marked fish seven weeks after it went to sea. It was caught in the river three miles below Perth. This was in fresh water. Some of the marked fish have been found in salt water, near Montrose; they were grilse; we believed them to be fish of our breeding. Some people attempted to cheat us. Our mark was known, and a reward offered. A good many fish, not ours, were marked as a trick and sent to us. We knew, from the mark on the fin being fresh, that it was a trick. Salt water kills parr. I never saw a parr older than two years. I can't tell the age of the parr now shown to me. I can't tell the sex. I never saw roe to any size in a parr. The male parr spawns; that is, it has milt. I don't think spawn could get through the filter at Stormontfield

pond. I have known a salmon take smolt as bait. I know that parr is used as bait.

PETER MARSHALL.—I have charge of the breeding ponds at Stormontfield. Filtered water is put into the beds of the ponds, and ova was deposited on gravel. The ova was put in in November 1853. In 130 days the ova first produced a little fish, with a bag attached. (Witness here exhibited specimens of fish in the different stages of production.) In six weeks the fish began to feed. In three months they increased into the parr state, and in fourteen months, or two years, became smolts. When the scales are removed from the smolt, a parr appears. I have no doubt the fish now shown to me are parrs. The male parr has a milt, but the female never produces till she goes to sea. Upon examining two of the fishes now shown to me, I find one a male and the other a female. Before any fish got out of the ponds, fourteen months had elapsed, and by that time some had got silver scales. There were then thousands of parr remaining. In the spring following, the remainder became smolts, and went to sea. We marked a number of smolts every year, and forty-two returned to the river the first year. When the fish were allowed to get out, I watched, and it was impossible for any other fish to get in. The ova originally put into the pond was from salmon. Nothing but the ova and milt of salmon got into the pond. We are careful in not allowing any of the ova of trout to get in. We have been experimenting for three seasons. The gravel put into the pond was taken from the bed of the river Tay. Being shown one of the fish produced; it is not above twenty months old. The marks of a parr are finger marks. The number of marks vary. I have found eleven, and I have found sixteen. The parrs thus observed were of the same ages. The number of marks does not depend upon the size. I can give no reason for difference in the number of marks. I am sure that the fish with eleven marks was of the same age as the fish with sixteen. I never saw parr with fewer than eleven. I have never seen parr taken from any river but the Tay. The Tay parr are from four to six inches. I have never seen a larger parr than one of those now produced. I know that fish very like parr are found in other

rivers. For example, the parr of trout; it has the dead fin orange; the rudder fin is white at the bottom and yellow at the top; there is no peculiarity about the other fins. They have not so many bar marks as the parr. I do not think they have ever more than six marks.

Cross-examined.—The gravel in the ponds was taken from the river within 300 yards of the ponds. The water there is fresh. The second year the pond was emptied altogether, and the whole fish were then out of it. The bottom of the pond was cleaned out, and new stones put in. The pond was dry for a fortnight. There were a few parr then let out. The parrs and smolts associated together in the pond. 1292 were marked the first season. It was not kept secret. A reward of five shillings was offered. The reward was advertised in the Perth papers. Fish were brought with spurious marks. I am aware only of one case. The pond was opened on the 14th April—never later than May. Supposing a fish caught in May, after being let out of the pond, and marked, I could not say whether it had been marked by me or not, if afterwards brought back. The pond is about a quarter of an acre in size, and open to the public. It is quite impossible, I think, that young parr could have been thrown into the pond. The pond is not watched night and day. The second year we marked the fish; in addition to cutting the dead fin, we cut the tail. We got fish back with both of these marks. The first year we got some back in about two months with the dead fin mark. The second year we got back fish marked only with the dead fin mark. The first year's first fish got back was five-and-a-half pounds in weight. No fish that left the pond was a pound in weight. The second year's fish were a little larger than the first year's when marked. They came back of various sizes, being five pounds and upwards. Some of these fish were produce of first year's spawn. I can't account for the difference of the rapidity of growth of some of the fish brought back in the first year, as compared with some of those brought back the second year. These being fish of the same spawn, we did not mark the fish as parrs. The reward was offered at the time of the marking of the fish. When the pond was cleaned out, there were some smolts

in it. The gravel in the ponds was quite pure. It was twice shovelled ; there could be no ova among it. Before 1853 I had no experience of parr. The spawn of a fish like the parr could not be mixed with the gravel. Whatever was put into the pond went out as smolts except in the case of a few cases where the parr escaped. I never understood that parr went to sea and came up as salmon.

SECOND DAY'S PROOF.

WILLIAM MATHIE.—I am a watchman on the Teith, at Cambuskenneth. Caught some parrs in the Teith yesterday, along with James Henderson.

Cross-examined.—We caught more than we brought here. My reason for not bringing more than these was that I did not think they would be required. I have no other reason. I never caught any parr in the Allan. Have seen parr that were caught in the Allan. Could not tell exactly how large I have seen the Allan parr. I can't say these are salmon. I know that the Teith salmon are larger than those caught in the Allan. These parr were caught near the Mill of Torr. Never saw them spawning in the Teith.

JAMES HENDERSON.—(By Mr M'LEAN.)—I heard the former witness examined. I remember the substance of his evidence. I heard the Sheriff tell all the witnesses to leave the Court. I went along with Mathie to get some parr ; he said they were to be taken to the Court. I was asked to come here to-day.

DAVID HUNTER.—I am a watchman on the Allan. I was instructed to get some parr out of the Allan, and went along with some other parties, and got what I now produce.

Cross-examined.—I got part in the Knaick and part in the Allan. I am a watchman on the Allan ; so is William Mathie. We are joint tacksmen—having the net fishing in the Borough Meadow, below Stirling, on the Forth.

THOMAS GLEN.—(By Mr M'LEAN.)—Heard the former wit-

ness examined. Heard the Sheriff tell all the witnesses to leave the Court. Did not know I was to be examined. I came just to hear the case tried. I never was asked any question about the case. I am a watcher on the Allan—sometimes through the night as well as through the day. All the watchers are here to-day.

By Mr GALBRAITH.—I went along with D. Hunter to catch parr in the Knaick and Allan. Hunter brought away the fish.

Cross-examined.—Those from the Allan were caught in the stream a little above the Laighill. I was on the bank, a bit from Hunter, and I did not catch any of the fish. I did not see Hunter catching any of them. I was out a good part of the day. I did not see Hunter throw away any of the fish. We fished up to above the first railway bridge. I did not see Hunter take any fish out of the Knaick. Saw these fish caught by James King. There were three of us together—Hunter, King, and I. I saw King take four or five out of the Allan. We fished up the Knaick to above the Mill of Ardoch. Could not say there was any difference between the Allan fish and those of the Knaick. I could not swear they are parr we caught in the Allan or the Knaick.

JAMES GREENHORN.—I have been connected with the fishings on the Forth and Allan for he last ten years, and am at present a joint tacksman on the Longrank, below Stirling, and also on the Keir fishings. I have fished since I was a boy, and have paid a good deal of attention to it. I understand a smolt is a parr. While a smolt, there is no appearance of a parr; but when the silvery scale is rubbed off it has. I have seen smolts from March till June. They disappear completely after that. They go down the river. I have seen grilse on the last Friday in May. No dependence can be placed on the grilse appearing till July. Grilse I consider to be in connection with the salmon. I am satisfied that, when going down, they are going to the sea. I have seen them in thousands, at the cribs at Craigforth, during a drought. They were in a confined pool, where they could not get through. They disappeared the first fresh that came. The first grilse that appear in the river, is the fry that went down. I am satisfied, in my own opinion, that the fry going down return

grilse. The fish I saw at the cribs, about six years ago, I am sure were grilse. There were in these pools both trouts and parr. In some pools plenty of fry are to be got. In pools near the spawning beds there are parr to be got, (I allude to smolts here). There is not a pool or stream on the Teith where parr are not, (I confine myself to smolts). Every pool at a certain time has parr. I have stripped the scales off a smolt, and am perfectly satisfied it was a parr. I hold this as applicable to all the smolts I have seen. It is my opinion that parrs are the fry of salmon. They assume the silvery scale when they go down the river. I have seen kelts taking on the same silvery coat, at repeated times, in the end of March and April, preparing to descend the river; but, before this, I have seen them of a different colour. I have examined the process at the Stormontfield pond. I went to the pond to learn what I could of the process, and now proceed to tell what I myself observed. In the second year of the experiment, in the breeding boxes, I saw the spawn that was deposited the fall previous to that. It would be about the end of March. I could discern only a few; they were very small. Below these boxes was the pond, abounding with little fish in thousands. The keeper scattered food over the pond, so that I saw them move distinctly. I hooked one, and to my satisfaction it was a parr. In that same pond there were fish from one-and-a-half to five inches, all to appearance parr. (Shown some in a box). These are parr. (Shown another lot). I consider these all parr except one, (one of Hunter's catching). I have opened and examined parr. I could distinguish male and female. The milt in the male was very distinct; in the female very indistinct. The male I have seen, but not generally, very full of milt.

Cross-examined.—I have been interested in the fishing for twenty years now. I was living on the Teith side, and have caught smolt. Never got parr or smolt in the close season. My experience consists only of what I saw in the open season, from February till September. I have stripped, perhaps, half-a-dozen smolts altogether. When I did so, to my own satisfaction I found parr below. I neither counted the bars nor black

spots on the parr. I made no further investigation. I can say no more as to its being a parr. I don't know how many kinds of parr there are. There are three kinds of trout ascend the river—the salmon, the sea, and the bull trout (which is not a common sea trout, or salmon.) There is also the hirling, which I suppose to be the young of the common trout. Don't know there are three kinds of parr. Don't know that there is more than one kind. Never saw the young of the hirling, the sea, or the bull trout. I have taken three smolts out of a perch. I don't know that salmon prey upon parr, but have no doubt they do so. The salmon prey upon the garvie. Parrs become scarce and small after the smolts go down. I never knew parr descending or ascending the river. In the pool at Craigforth I saw nothing but smolts. I saw them for three weeks. I saw no particular difference on them during that time. The distinguishing marks of a parr are the bar marks. I don't remember the number of these. I never compared the fins or the bars of the smolt. My evidence here given as to my distinguishing the parr, is by the bar marks wholly. At the end of October or December I have seen parr with roe. I have distinguished roe in the female. The male parr's was farther advanced. It was scarcely visible in the female,—not a hundredth part in comparison to the male. Comparing the roe in the salmon and that in the parr, it was not near so large in the parr as in the salmon. It was an ordinary sized parr I experimented on. Salmon come up the Teith from five and a-half pounds, the smallest, and forty-six and a-half pounds, the largest. (Shown the parrs produced by former witnesses.) I think the first lot are all parrs. The second lot also, except one, which differs from the others in the bars and the fin. The bars are not shown on that one as on the parr. The dead fin is more red or bloodshot than on the parr. Another mark I distinguish by is the predominating mark on the gill. It is also stiffer than the other fish there, which I take as another mark. I have never seen so many parr after the season as I now see. I could not say the female parr becomes foul. I say the smaller parrs there are the youngest, from what I saw at Stormontfield ponds. The parr in the Teith, I have heard, are smaller than

those in the Allan. The salmon found in the Teith are larger than those of the Allan. The smolt's mouth is very tender. Can't say it is more so than the parr's. I can make no distinction of the tenderness of the mouth in the hooking of them. I visited the Stormontfield ponds, the second year after they were opened, in March or April. The nursing pond is fed from a lade. Could not say where it comes from. I was told it was from the Tay. The water did not appear to be filtered. I took only one parr out of the pond. I handled no more of them. The pond might be seven feet deep. Can't say there were any other fish in that pond. Could not swear to any of the other fish in that pond being parr, but the one I took. I never knew a fish I have seen as a parr coming back as grilse. Have found parrs in the rivers all the open season. Never saw parrs spawning. Never examined the bones, or anything else.

Re-examined.—I understand the sea trout, the bull trout, &c., to be fish of the salmon kind. Never saw parr going down in shoals. I have never seen smolts going up the Allan or the Teith in shoals. I examined parrs in August and September. In the female, I found the chain where the roe is scarcely visible. In the male it was perfectly developed. The parrs on the table are a proper specimen of the parrs in both rivers.

Cross-examined.—The roe came out of the male when I pressed it, but not the females. I distinctly state that I do not know a male from a female in the parr. I know of no distinguishing feature between the bull trout and the proper salmon. Can't say parr remain more than one year in the river before they are smolts.

PETER MARSHALL.—Since I was here last court day, I have caught some parr in the Tay and Stormontfield pond. I produce them,—the large ones from the pond, and the other two from the Tay. (Shown Mathie's fish). They are all parrs, and Hunter's lot also, except one, which is a trout. I distinguish it by the rudder fin. The rudder fin of the parr is yellow. The dead fin in the trout is always orange; in the parr it is generally dark. These are special marks. The water in the pond comes from the lade, and originally from the Tay. It is possible the

water can get to us without bringing fish with it. I believe nothing but water comes into the pond. Every provision is made, by perforated zinc, &c., to keep everything out but water. I produce a bottle containing a parr of twelve and one of twenty months, and a trout and a smolt two years old, ready to go to sea. A fish like this, covered with these scales, does not remain in the river, but goes to sea. Parrs remain in the pond more than one year sometimes.

Cross-examined.—It is by comparing the one lot on the table by the other, that I can say they are the young of salmon. I can't say these in the tin box are the same age as those I brought with me. I have seen them larger in the Tay than my two. We have them in the pond as large as the one in the bottle, which is from the pond. I can see eight bar marks on the small trout on the table. There is no difference in the marks on the trout and the parr. The salmon never gets these spots which the trout has. Can't say whether the trout or the parr is oldest. The smolt in the bottle I have kept for a year past. The trout in the bottle is not the same kind of trout as the one in my hand. There are, to my knowledge, three kinds of trout in the Tay. My whole experience is in connection with the Tay. I never caught or saw any fish caught in the Allan. We have many visitors at the pond. I often show how the sluice works. There may be half-a-dozen inches of water free at the bottom. I lift the sluice during both spawning and breeding time, to all the visitors who ask.

Re-examined.—The breeding boxes have a filtering pond, which prevents anything getting in but water. The filter is composed of sand. We have not so large parr on the Tay as these on the table from the Allan, which I think is owing to the feeding being better on the Allan than the Tay. The longest time they continue in the pond is two years. Some of them go sooner. We opened the pond at the end of two years and let them out. The Tay is heavy, and has a strong current. The Allan is more streamy, with pools.

Cross-examined.—(Shown two of the fish). Can't say which is oldest. Can't say the little one is five years old. Can't swear

to the age of the two from the Tay. The one from the pond is twenty months old. I put it in, and kept a note of the date in a book. I watched the eggs, and I thus know its age. The salmon feed on worms and flies. My opinion as to the one fish being better fed than the other, is because it is fatter. I never had a fish more than two years old under my eye. There are no filtering beds leading to our nursery pond. The bed of gravel is about a stone thick. I have never seen any inclination in the fish to come out of the pond without spawning. I can't say the young of the salmon and the trout associate promiscuously.

CHARLES F. WALSH, Perth.—I am a gunmaker in Perth, and sell fishing tackle. I have taken a great interest for fifteen or sixteen years in the propagation of salmon, and in what is going on at the Stormontfield ponds, from their commencement. I have seen the whole process of spawning. It was the spawn of salmon and grilse that was put into the boxes. The water was let in through a filtering box, so that no foreign matter could get in. They may hatch in forty days, but it is generally 140 days there. They hide sometimes among the stones in the breeding boxes, and then go down to the pond. Some go down to the river when they are thirteen months old, and some at two years. Some of them remain another year. When they go out they are covered with a silvery scale. They go about the same time as the smolts in the river; they go in shoals. I am satisfied these parrs are all salmon. I am not aware of smolts being in the river at this time, but there are plenty of parrs. The size of the fish does not show the age. I have seen a fish one ounce in weight, and one sixteen pounds, both the same age. (Shown Mathie's fish). These are all salmon fry, and also Hunter's lot, except one, which is a yellow trout.

Cross-examined.—My observations are almost confined to the Tay and its tributaries. My experiments with respect to salmon and grilse are confined to the Stormontfield ponds. Much of the spawn deposited there I did not see. I knew them to remain there two years. They would have remained longer had they been allowed. I never saw parr going up and down in large quantities. We had a mark on the fish of one ounce, and the

one of sixteen pounds, and thus knew them to be of the same age. The dead fin was cut off. I know there were some fish brought to Stormontfield, and attempted to be passed as the marked fish. I know that a great many people about Perth knew the fish were marked. I did not know of a premium being offered. I am aware that fish sometimes lose their fin without it being cut off. My opinion is that they are parrs before they are smolts. I know that the male parr has a milt. The mouth of the smolt, I think, is more tender than that of the parr. I used to watch the habits of the yellow trout, which are very different from the salmon.

Re-examined.—The mouth of the kelt is twice as tough as that of the smolt. The kelt, when going down, puts on a silvery scale.

DEFENDER'S PROOF.

JOHN BAYNE, builder, Dunblane.—I have been in Dunblane all my lifetime, and have been a fisher for thirty or thirty-five years. I am forty-two years of age. I have fished in the Allan for the last thirty years, and have taken both parr and smolt. I have seen the parr on spawning beds with salmon and grilse. I have found parr during the whole season. I have seen them running up in large numbers with the grilse. I have examined the parrs particularly. Don't think that parr and grilse are the same. My reasons for thinking so are these:—I find the parr is not of the same make as the grilse—the parr is larger in the head; the parr's fin is yellow—the smolt's is bluish. I never cut up smolts, but have cut up both male and female parr. I found roe in the female, and milt in the male. The roe in the female could scarcely be discerned with the naked eye. The roe in the parr appears to be as large in proportion as in the full-sized salmon. The smolt's head is longer than the parr's; its mouth is also much more tender than the parr's. I have observed that, during the spawning season, the parr gets quite black. I have stripped the scales off the smolt, but never found

it to be a parr. They have no appearance of the parr. I have been once at the Stormontfield ponds, and examined them minutely. The keeper showed and described the whole process. The nursing pond was supplied from a mill lade, which came from the Tay. There is a sluice with perforated zinc about one-twelfth of an inch wide. This would admit about nine or ten of the ova of the parr at a time. The water went down dirty. I looked at the nursing pond. The keeper threw in some meat, and I saw the fish. Don't know what kind of fish they were. He said there were other kinds of fish than the salmon kind. He also said he could not keep them out. I observed the fish to be different. I would say that the fish in it could have produced as much ova as would fill it ten times. I think the perforation was large enough to let in ova. I have fished the Teith. The Allan parr are as large again as those of the Teith.

Cross-examined.—Hunter's lot of fish on the table are all parrs except one. I never saw parr spawning by themselves. The smallest parr I have seen would be about three inches. Have heard they were parr the first year. The keeper at the pond told me so. I saw parr alongside grilse and salmon in December and November. Have seen salmon fry; they are smolts. I never saw the young of the salmon till I saw the smolt. They would be from three to six inches. Never observed the smolt till it was in the state for descending. I have seen the roe of a salmon. The ova would be one-eighth or one-sixteenth of an inch in diameter. The size of the ova of the yellow trout is in proportion to the size of the fish. I have seen the salmon in the spawning state. I never saw smolts coming up. I have never seen parr where salmon could not be. I think the spawning season is in October and November. The keeper at Stormontfield said there was no interruption between the stream and the feeding pond. They could get through although the perforation was as close again. The parrs I saw on the spawning bed were either eating the spawn or spawning themselves.

Re-examined.—I have seen salmon spawning in redd, but never in mud. If the ova of the parr got into the nursing pond,

it would come to maturity the same as the others. I have seen the parr trout a quarter of a pound weight.

JAMES TODD, coal agent, Dunblane.—I visited Stormont-field ponds along with John Bayne on Friday last. The keeper showed us the ponds and the whole process. He lifted the sluice about a foot or so. There was nothing to prevent the water then getting down to the nursing pond. There is a considerable fall in the water between the sluice and the nursing pond. I could not say what sort of fishes they were in the ponds. The man said they were neither parr nor smolts. He said they were always where fresh water was, and that he could not keep them out.

JAMES BROWN, gardener, Dunblane.—I have been a fisher for forty-eight years. Have fished at all seasons of the year, close and open, night and day. I have taken twenty-two dozen fish out of Kilbryde Burn in a day. I have taken grilse, smolts, and salmon in all the burns. I have stripped the coat off the smolts. Never found a smolt with milt or roe. Have ripped up both parr and smolt. I have found milt and roe in the parr. The smolt is generally bluish green on the back, and thinner and longer in the head. The parr is of a reddish yellow in the fins; it appears to me to be older than the smolt; it is higher flavoured and firmer in the flesh than the smolt. I have eaten them both. The bar marks of a parr are more brilliant than the smolt's, and I think more in number. It was generally about June before I caught parr. I have seen parrs spawning in Murdochford Burn, which runs into Kilbryde, which runs into the Teith. I did not see salmon near them. I saw them about a fortnight ago along with Wm. Sharp and M'Donald, and have no doubt they were spawning. I have seen parr feeding greedily upon the spawn of the salmon. The parr I got in the Teith are smaller than those of the Allan. I have killed three salmon or sea trout above the rocks of Kilbryde.

Cross-examined.—I killed the salmon or sea trout—one in August and two in the end of September. It will be twenty years since then. A parr is neither trout nor salmon. I did not examine whether the fish I saw were male or female. Could not tell this. From what I saw going along Kilbryde Burn I con-

clude they were spawning fish. I know that this fish is much softer at one season than another. The parr frequents the Allan, and are very ripe about June. I think they come up from the sea. Smolts go away from about the beginning till about the end of May. There are more parr just now than when they at first come up. Hunter's lot of fish on the table are all parr except one. Mathie's lot are different in the shape from any smolts I ever saw.

DAVID FERGUSON, Doune.—I have fished for fifty years in the Allan and Teith. I have caught a good many parrs both summer and winter. It is my opinion that they are fish prepared by God to feed the salmon. There is a different appearance between the smolt and the parr. The smolt's head is longer and smaller than the parr's. There are black spots on the parr which are not on the smolt. I have seen the roe in the parr. Have caught parr in the Teith, the Allan, and Kilbryde Burn. The Allan parrs are much larger than in the Teith. The parrs are plenty in all seasons. I have seen salmon taking parrs. Have seen parr spawning, and salmon spawning near them, and the salmon turning round and eating up the parr.

Cross-examined.—I have seen the male and female parr together, and believe they were spawning. The spawn of the parr is so small that the seed of Adam could not see them.

DAVID BAYNE, joiner, Dunblane.—I have been a fisher for twenty years. Have caught all the kinds of fish that come up the Allan. Have killed parr in the Allan with milt and roe in them. Have killed them in the kelt state in the Allan. I am quite satisfied that parr spawn. Can distinguish male from female. I have seen, caught, and examined smolts. The parr and the smolt appear to me to be a distinct species. I never found roe or milt in the smolt, but invariably in the parr. The parrs come up the Allan when the smolts go down. The parrs go down about the end of January again. Never found parr along with smolt. I have seen 130 dozen smolts caught or kepped going down at the Mill of Keir, and not a parr among them. They were kepped with a basket in below the fall at the bye-wash—55 dozen were caught the first night, and 75 dozen the second.

It was in the end of April or beginning of May. I have stripped smolts often. It is barred the same as a parr, but differently shaped. I believe the yellow fin to be the young of the yellow trout. The flesh of the parr is whiter than the smolt's. The parr comes up for the first time in June, and continues till about this month, (November). The minnow comes first, then the parr, then the sea trout, &c. I have seen smolts in a pool where they could not get down, and seen them about three weeks after about an inch and a-half longer. This was in summer. In April I have caught eight or ten dozen trouts, and found not more than eight or ten parr among them. The parrs get plenty in July and August. Smolts get plenty in the Allan about April, and continue till the end of May, if not wet weather. I have no doubt the parrs I caught in the Allan are a different fish from the smolt caught there, and I say this after careful examination.

Cross-examined.—The parr is a distinct species from the smolt. The smolts are of the salmon kind. The parrs breed in small streams where they get light water and small gravel. They will breed in the Allan. Never saw them depositing the spawn. I have seen the salmon spawning. I know the parr to be different from the smolt by the softness of the mouth. I have lost many smolts by their slipping off the hook, but very few of the parrs in that way. I caught two female parrs to-day, and found roe in them. I never saw parrs in shoals.

By the SHERIFF.—Can't say as to the history of the fish between the time of spawning and the putting on of the silvery coat. It was always my belief that the parr which came up came up from the sea side. I have seen them coming up from about a mile below the Mill of Keir. Have not seen them below Bridge of Allan. I think they go to sea, because I have seen parr coming back full and clear, which would scarcely be the case had they been in fresh water all the time.

JAMES CHRISTIE, Dunblane.—I was brought up within two or three hundred yards of the Teith. Remember seeing at the Isle of Canty a number of parrs in an old water-run in the month of May. They remained there all summer and winter, and next summer till the end of August. I fed them regularly. I observed

no difference on them all that time. Some person killed them with lint.

JAMES EASSON, Dunblane.—(By Mr GALBRAITH).—I have not subscribed to the fund for defraying the expenses of the defender's case.

By Mr M'LEAN.—I saw some fish taken out of the Allan on Monday—three smolts or parrs. Took them to Bridge of Allan along with James Mason, and gave them to Dr Paterson. These are the same as I took to Dr Paterson.

Cross-examined.—Can't say whether they are parrs or smolts.

JAMES MASON.—Got three fish on Monday. James Easson put them into Dr Paterson's hands.

Cross-examined.—James Bowman caught them. They were like these. Could not swear they were the same. The large one is not. James Easson gave two grilse to Dr Paterson. Could swear by the length of them they were grilse. A sea trout is much smaller.

J. WINGATE JOHNSTONE, Deputy-Inspector of Hospitals, and presently residing at Bridge of Allan.—I am a physician. I, along with Dr Paterson, made an anatomical examination of two grilse and three parrs. A male and a female grilse, and one of each sex of the parr. The spinal column of each grilse had fifty-six vertebræ. The parrs had fifty-nine. The bones were fully developed in both species. The bones of each fish appeared to be fully formed. Counted them in the fish, and also by placing the spinal bone between us and the light, and then after boiling the fish. The grilse would be about twelve and fourteen inches. They appeared to be different fish decidedly. I directed my attention to the organs of generation. The milt in the grilse was well expressed; as also in the parr—not to the same extent. It was seen with a microscope in the female. The milt in the male parr was pretty full. I consider the parr as fully arrived at maturity, as they had organs fit for producing. Dr Paterson has one of the fishes. I believe it is the female parr. That is the fish we examined—at least it is very like it. I see the roe in it now. That is a fish capable of reproducing its species. I can't say exactly as to its age. A fish with a roe developed like this,

will not show after the time of spawning. I would expect to find the organ, but not charged. The grilse's roe was within a few weeks of being ripe. The female parr's was smaller.

Cross-examined.—(Shown some fish). Can't say what they are. Could tell a cod from a salmon, but nothing more. I am no fisher. Don't know whether the other fish I saw were grilse or not. Don't know that the vertebræ in fishes is always the same. Can't say that in some fishes there are not more bones than in others. I have read *Fyfe's Comparative Anatomy*; it was a book of authority at one time, but we never look at it now. I was told the fish we examined were parr. It was a good stiff cartilage. In the larger fish, the bones were decidedly stronger; just as much difference as in the bones of a young and a grown-up person. It was from the vertebral column that I distinguished the fish. I hold this opinion notwithstanding what you have read from Fyfe. Bloomenbach is a very good authority; but had I heard it from Knox of London, I would say it was gospel. Bloomenbach and Couvier I hold to be works of authority at the present day. In the two fishes I examined, I can't say whether the milt or roe was largest, as I never examined a fish before. There was more appearance of milt than of roe in the small fishes. I took the microscope to look at the roe. My sight is not of the best, yet I saw the roe with the naked eye. I am ignorant of the natural history of salmon, or fish in general. I would not have known that these are not of the salmon kind, unless I were told. I judge from the anatomy of the fish.

Re-examined.—I consider Dr Knox the highest authority. (Read a part of Knox's book, *Fish and Fishing in the Lone Glens in Scotland*, pp. 88 and 89). Taking these two passages together, I think the colouring is not so decisive as the anatomical examination. (Read a passage from Dr Parnell's work, pp. 32). I should say by the spinal column is the most decisive way of judging. (Page 85).—I consider the difference in the vertebral column more decisive than this. (Page 87).—As to the spots, I would not consider them to be more decisive than the anatomical examination. (Page 118).—As to the specific character, I consider this more minute than the anatomical examin-

ation—at least I consider this very important. If I found fifty-six bones in one fish, and fifty-nine in another, I would say they were a different species.

By the SHERIFF.—The roe of the parr and the grilse appeared both to be matured. The roe of the female fish was larger than the milt of the male. The roe in the grilse was farther advanced than in the parr.

Cross-examined.—I don't know Parnell to be an authority. I have heard of him. I regard Knox, as an anatomical man, to be the highest authority.

Re-examined.—I count fifty-six vertebræ in the back bone of the grilse now handed to me. It is a similar bone to the one I examined at Bridge of Allan. I found fifty-nine in the parr, along with Dr Paterson, and left it with him.

Dr PATERSON, Bridge of Allan.—(By Mr GALBRAITH.)—I subscribed five shillings for this case. Never saw Mr M'Lean before yesterday, nor the defender. Had no object in view when I gave the subscription—it was merely as an act of charity. I was not asked to dissect the fish gratuitously. I was not asked my opinion when I subscribed.

(Mr Galbraith here objected to Dr Paterson appearing as a witness, but after some discussion he was allowed by the Sheriff.)

By Mr M'LEAN.—I had two grilse and three parrs handed to me the other day. I now lay one of them on the table. I examined the vertebræ of it. That is the parr that Dr Johnstone and I examined. We had a male and a female grilse. I dissected and found fifty-six vertebræ in both the grilses. We examined the fish, and then cut it up. We detached the spine of one, and counted the vertebræ; we then boiled the fish, and counted them separately. In the other one, we boiled the fish entirely, and found fifty-six in it also. In the parrs, both male and female, we found fifty-nine. The fish I produce is one of the parr. I can observe the roe with the naked eye. The bone I brought with me was the only one fit for evidence. I could not have given my evidence more distinct, although I had brought them all here. From what I know, I could not say the fish you show me is the young of salmon. Dr Fyfe is now out of date.

I would not appeal to him as an authority. I know that Dr Knox is a great authority.

By the SHERIFF.—I am not aware there are different species of parr. In the parr and the grilse the general appearance was different. In the head, I find a great difference in the parr and the smolt. The parr's head is more of a bull head than the smolt's, and is also different from the head of the grilse. It is against all rule of nature to think that this difference would ever disappear. There was no preceptive difference in the heads of the parr.

Cross-examined.—The one grilse I examined was male, the other female. The milt of the male parr is the largest. It took us above three hours to make the examination. I cannot say the bones of some fishes have more vertebræ than others, but I know these have. I should hardly think that our examination should settle it as a general rule, but the deduction is that it would be. I draw a conclusion from these premises as to a certain extent only—to an extent to be founded on these cases. I am perfectly certain they were grilses I examined. It never occurred to me that you might, for your satisfaction, wish to see the other bones which I threw away. I consider the vertebræ of the parr as tough as that of the grilse. I have heard of Shaw. I never saw a parr like that on the table assuming the appearance of a smolt. I have seen smolts. (A Report from the Royal Society of 1839, by Mr Shaw, was now read). I am not prepared to differ from Mr Shaw as to his saying the parr in our rivers are the young of salmon. My idea is that this can neither be proved nor denied. I cannot say whether Shaw's report is true or not.

JAMES REOCH, labourer, Dunblane.—(Produced a grilse, and also some live fish in a can, which he took from the Allan to-day). These are Allan parr. They are nothing like smolts. The spawn of the smolt is like puddock pownies or heads. I never saw these turn into smolts. Never saw the young of parr. The puddock heads are the young of salmon. They appear about the beginning of March, or before that. There are not many seen after that. They don't turn into smolts all at once; they must have time to grow. The parrs are spawning just now. I fished often

here when I was young; got them different sizes, and at different times in the year.

Cross-examined.—There are five parrs here with nine bars, and two with eight. They are all parrs, but vary in size; the largest is about five inches. Perhaps one of them may be five years of age. The smallest might be as old as the largest. I have seen smolts. Never saw parrs getting scales on. I say that parrs belong to the yellow trout. They are not its young. The male parr may go along with a female trout. I have seen them on the redd. Never saw female parrs on the redd. I can't distinguish between a male and a female parr. Never saw the produce of a male parr and a female trout. I saw them in the Allan, on the redd below the wool-mill damhead.

JOHN M'LAREN, fishmonger, Auchterarder.—I have been a fisher since I was able to fish. I am acquainted with the falls of Tummel, Rannoch, &c. Have fished Loch Rannoch and the river Rannoch frequently. There are falls there of considerable height. Never knew any one who had seen salmon above the falls. I consider it impossible that any sea fish whatever could get above these falls. I have found the bull trout there, which is not a sea trout. Neither is the char trout, which is found there, and also the parr. I have caught parr often, and know them well. I have found parr in Rannoch in abundance, the same as I have found in the Teith; and I found plenty of them in all the streams thereabout. I have seen smolts often, but they are not like these. There is a difference in the head, and in the line on the belly, which in the smolt is blue. That parr you show me has come to maturity; whereas the smolt is long and small, and has not. The fin in the smolt is darker. I have traced the growth of the smolt from the formation of the eye, which appears first, down till the time it left the locality where I was. It has never during the whole time any resemblance to the parr. (Shown the grilse and the parr on the table). These are totally different. I know the sea trout. I don't know a sea trout they call the bull trout. There is a trout goes down the Earn, and other sea rivers, which sometimes intermixes with the salmon, but the trout at Rannoch are quite a different species.

This sea trout has no connection whatever with the bull trout of the Rannoch, which is just like a large yellow trout. The bull trout takes the parr for bait. Both the bull trout and salmon take their young for bait. The smolt grows very rapidly.

Cross-examined.—The smolt, when stripped, had no appearance of the parr. I fished in the Rannoch about two years ago. The last time before that was six or seven years since. The bull trout, the char trout, and the pike, are there. I say the bull trout is not a species of the salmon, but of the yellow trout. I have seen salmon at Callander spawning, and also at Loch Lubneg. I examined them. I saw the spawn deposited there. I saw the fish spawning about Martinmas. I looked at them in the spring; they were then in a clustering state. They were in the egg till the end of February, and came out of it about the end of March. They were of a very small species. Can't say I saw them going with the egg attached. They were small like needles then. You could see them in any back water about the middle of April or so, when they begin to get stronger, and get on the silvery gloss in the month of May. The first time the water comes down, they disappear altogether. Don't know where they went to. Some of them would be about four or five inches.

By the SHERIFF.—I have seen the young of the bull trout very small. I have seen them like needles. They are to be found in Loch Lubneg, &c. There are no trouts in Loch Drunkie, but pike in abundance. Have seen the bull trout spawning.

JOHN ROBERTSON, carpenter, Aldrui, near Kinloch, Rannoch. —I fish often in the Rannoch. There are the common trout, the char trout, &c., there. The chars are a species by themselves; they are red below and blue on the back. That is a parr you show me. There is one there has marks of both kinds, but it would never grow to a salmon. There are plenty of parrs in the Rannoch, and in all the rivers about us. I never found any but male parrs. I think there is not such a thing as the female parr in our part of the country. As far as I can judge I see no difference between that parr and our fish. The fall at Fascly

is very high. They put creels at the bottom of the fall, and catch the fish coming back. I never saw salmon there. I think it impossible for them to get up the falls at Tummel Bridge or Fascly. Pitlochrie is twenty-one miles from Kinloch-Rannoch. I don't think they can get over the Fascly falls. Never heard of salmon or smolts being there. They are so uncommon in our country as never to be seen there at all. The parr is very easily caught. The char is different from the parr; it is not so plenty, or so easily taken. The parrs have no red spots till they begin to lose the marks of a parr. I think the parr in our district is the common trout. It has that mark while little, but when it grows up it loses it. I think the parr are all one species.

Cross-examined.—The parr grows to the same as the common trout in Loch Rannoch. The falls of Fascly are higher than the others. I can't tell whether there are floods which would enable the fish to overleap the falls.

JAMES KING, watchman on the Allan.—I am a watcher on the Allan, and have been a fisher for more than thirty years. I have taken grilse, salmon, and smolt in the Allan. These on the table are all parrs except one, which is a minnow. The second lot are also parrs from the same river. I never opened smolts, but have opened parrs often. I know a male parr from a female. I have stripped a smolt, but there is a great difference from the parr. A smolt is darker and glossier than the parr. The parr's head is sharper and smaller. The smolt's shoulder and head is broader, but sharper at the end. The smolt has the same marks but has not the same clear colour. I think the parr is a different species from the smolt. The fins of a smolt are blue, the parr's yellow. No difference in the tail, little difference in the flesh fin; the parr's is a tingly red colour, there the smolt has no tinge. I caught the fishes Mr Galbraith had here last court day. Some of them were different from these, one or two of them. These are a fair specimen of the Allan parr. The parrs I caught I think, in my judgment, were not young salmon.

Cross-examined.—When I scraped the smolt it had the same appearance as the smolt, but not so clear.

By the SHERIFF.—The parrs I caught were two or three of

them different from these. They were larger than these. It astonished my judgment when I saw them. They appeared different. It is my opinion these are a different species of parr.

Cross-examined again.—The parr's marks are much more clear than the smolt's. I have seen a fry not fully covered with the silvery coat. I have seen them half covered. The half uncovered had the appearance of a parr, but not so bright in the colour. I have caught fish before April, and have killed a smolt with the bars, but no silver coat. When they take on the coat it goes over them like a leprosy as it were. They take on the silvery scales after they spawn before going down again. The smolts going down as salmon fry are going to the sea ; some return as grilse, some as sea trout. I know the fish I saw with the scales to be a smolt from the bars, and I know smolts from parr before they take on the coat, I have had no reason to change my opinion this thirty years or more.

Re-examined.—I have seen the smolt before it took on the scales, but it is different from the parr.

THOMAS ALLAN, residing in Stirling.—I know parr from smolt when I see them. I remember my brother and a young man bringing home three smolts and two parrs, and putting them into a spring well where they could not get out. The smolts grew rapidly, and died in about six weeks. The parrs grew very little in six months. The parrs were lifted out into a bucket when cleaning the well. I kept the parrs from about April till this time of the year. I could not swear these are all parrs you show me.

Cross-examined.—I do not know to my own knowledge where they were caught.

JOHN HUNT, Dunblane.—I know Bruce's well. I got two parrs from the Allan, and put them in. One of them remained there five years, the other one died in a few days after it was put in. I left the place at the end of the five years, and lost the parr. I watched it all these five years, and it remained a parr all the time. (Shown some fish on the table). Four of these are parrs ; I can't say to the rest of them. I caught the two parrs myself, and am perfectly satisfied they were parrs,

PETER SPEEDIE, Dunblane.—I have fished for thirty years, and mostly in the Allan, and have caught parr, yellow trout, and salmon. I know Bruce's well. I saw a parr fifteen or sixteen years ago in it, for two or three years at any rate. I can swear it was a parr. I saw John Hunt bring home two and put them in. The other one died soon after it was put in.

Cross-examined.—The fish swimmied through the well. The water in the well is hard. The parr never attempted to get out. The well was cleaned, and I had the parr in my hand. It was put in again. Don't know who took it away. It was weakly, I think, after being caught while the well was cleaning. I know smolts when I see them. The parr in the well had no appearance of a smolt.

JAMES ANDERSON, Dunblane.—I was in court and heard the evidence the first day, but not the second. I have fished for forty years during fishing time, every season. I have fished Kilbryde burn from top to bottom. There are six or seven rocks in the burn. I have caught parr in the burn below the Castle. I have seen grilse above the rocks, and have also seen sea trouts. Below the rocks I found parr, but none above. Have examined parr, and found roe and milt in them. The smolt has not the least appearance of the parr.

WILLIAM JACK, Dunblane.—I am a fisher, and have fished a good deal in the Allan, Kilbryde, Murdochford, and the Teith. I have caught parr in all these except Kilbryde. I have seen sea trout caught there. Never saw parr caught there, although I have fished with the same bait as caught them in other places. I have seen parr opened, and have seen milt and roe in them. I have seen them on the redd in the attitude of spawning. Never found the parr becoming thinner or smaller. I have seen them in a full state. Have seen smolts, and seen the coat coming off in my hands, but it is not then like a parr. The dead fin of the smolt is clear and blue. The parr's head is shorter. The smolt's is more tender. We lose ten smolts for one parr, while fishing, on this account. There are no smolts among the fish you now show me.

Cross-examined.—The fish you now show me are, in my opin-

ion, all parrs except one, which I am not sure about. I did not see the parrs in the pitcher in the other room.

PETER KING, Dunblane.—I have fished for thirty years, and have caught yellow trout, smolt, parr, salmon, and grilse. Have never found milt or roe in the smolts, but both in the parr. I have caught parr this season, and examined them. I saw two or three opened in August, and saw the roe ; it would be nearly an inch long. The parr is firmer in the flesh than the smolt. The smolt is more tender in the mouth than the parr. I have fished Kilbryde burn, and got parrs below the Castle, but none above it. I have got sea trout above the rocks. I saw a Tay parr last court day. Looked at it through the bottle it was in, which also contained a smolt. They appeared to be different. The parr from the Tay had a bigger head, I thought, than the Allan parr.

Cross-examined. —I don't recollect finding parr above the Castle. The fish you show me are all parr. I think I have caught yellowfin in Kilbryde burn. The parr is most abundant in the Allan as soon as the smolts get out of the water. The smolts are out of the Allan, if the season answer, some time in June. There are parrs in the Allan in March or April.

The operations at the Stormontfield pond, to which reference is frequently made in the foregoing lawsuit against Shaw, appear to have completely captivated the understandings of some men. Notions about the nature of parr, which they had held from their youth upwards, vanished at once when that formidable establishment commenced breeding fish. It is, therefore, very desirable to know something of the erection and management of this generative nursery of the salmon

species. Peter Marshall, who, at the date of the lawsuit with Shaw, was examined by Mr Galbraith, the pursuer, (as will be seen from the foregoing proof,) swore that the ova was put into the pond, on gravel, in November 1853; and in cross-examination he deponed—that the gravel in the pond was taken from the river, within 300 yards of the pond, at which place the water was fresh; that the pond is about a quarter of an acre in size, *and open to the public*; that the pond was not watched night and day; that the second year the pond was emptied altogether, and the whole fish were then out of it, the bottom cleaned out, and new stones put in, and at that period it was dry for a fortnight.

Under such circumstances, it is very remarkable to find the witness swearing that “it is quite impossible, I think, that young parr could have been thrown into the pond.” Most people will be disposed to think it was the easiest thing in the world to perform such a feat. Probably his doubts arose from his ignorance of the existence of parr. “Before 1853,” says he, “I had no experience of parr.” To make up for this want of knowledge one court day, he goes back another court day, and endeavours to shed a flood of light on the controverted points; but the dispassionate reader will hardly conclude that he has been successful in dispelling the darkness. It is not a very logical way of doing it to tell that “we have many visitors at the pond. I often show the sluice works. There may be half-a-dozen inches of water free at the bottom.

I lift the sluice, during both spawning and breeding time, to all the visitors who ask." No doubt some pertinacious and brave true parr and voracious trout often visit the boundaries of the pond, snuffing up "boiled liver, rubbed small," and other good feeding to be found therein, (for Mr Stoddart expressly writes that the trout family "have a keen distinguishing sense of smell,") and on such occasions as the opening of the sluices, would adopt the noble sentiment, "never venture, never win," and make a heroical dash through when the visitors were drawing off the attention of the keeper. Even although Mr Walsh, the gunmaker of Perth—who has, by his own account, taken a great interest for fifteen or sixteen years in what was going on at the Stormontfield pond—had been there, armed with his best breech-loading rifle, and patent cartridges, he could not have popped! popped! so fast as to impede their progress, and prevent the little trouts and parrs having ingress to salute their royal cousins, and have a comfortable repast together, in the celebrated Stormontfield pond. It is a pity that gentleman did not give the ages of the fish, and their species, when he says, "I have seen a fish one ounce in weight, and one sixteen pounds, *both the same age*." This looks rather like a phenomenon in natural history. How did he happen to know when each fish was born, and the particular locality? There are marvellous inventions in gunnery now-a-days, but the two fish, of the same age

and so different weights, beats those inventions hollow. The law prosecutions, which were instituted by Mr Robert Buist, before quoted, do not exhibit that gentleman's private sentiments *previous to 1832*, and, therefore, it is proper to show that Mr Hogg, the Ettrick Shepherd, converted him, in conjunction with the Stormontfield pond. Mr Buist has put in print the following history of his conversion.

So far back as 1832, I wrote, in a paper in the *Quarterly Journal of Agriculture*, an answer to one by James Hogg, the Ettrick Shepherd, in which he propounded the novel and startling doctrine that the parr was the young of the salmon, and that, consequently, it was most prejudicial to the rivers to allow so many young salmon, under the name of parr, to be destroyed. Unable to adopt such a view of the question, I took up the popular dogma—that the parr was a distinct fish by itself; and, in proof of this assumption, argued that the parr was a little hardy complete fish, having no affinity to the salmon, whereas, on the other hand, the young salmon, or smolt, was a tender delicate fish, bred in the month of March, and going down to the sea in May following. In further proof, I stated the curious fact, that in the month of November that year a milt parr was brought to me with the milt flowing from it. The sentiments which I then entertained were just in accordance with the general opinion of the day; but the discovery noticed above has shown that the Shepherd was right, and that I, and nearly all the world beside, were wrong. That very instance which I adduced of the parr with the milt flowing from it has, by the recent experiments, proved the identity of the parr with the salmon. The parr in question was really the young salmon of the second year, which had not then gone to the sea. At Stormontfield we have rapidly seen a young salmon, which remained in the rearing pond till the time of migration in the second year, though only the size of a man's finger, get into such a state of milt in the breeding season, that we have impregnated

eggs of the full-grown salmon with it, and thereby produced young fish. Such is not the case with the sister fish of the second year in the pond, as not even the rudiments of roe can be traced in them. This fact shows incontestibly the great benefit that may be gained by the strict preservation of the parr, as, previous to this discovery, it was taken by thousands in small meshed nets in some salmon rivers in England, from which both salmon and parr have now entirely disappeared.—*The Stormontfield Piscicultural Experiments*. By Robert Buist. 1865.

Mr Buist's article is very curious in more respects than one, and must be read from beginning to end to be fully appreciated. It is plain poaching is a trifling means of destruction of salmon, compared with other agencies. Trouts lay waste the salmon spawn; the pike and the eel do so; the water crows do so also; and the heavy floods that come on after sudden thaws "sweep millions of eggs from the places where they were deposited." Mr Buist's description, in his warily written paper in the *Quarterly Journal of Agriculture*, in 1832, of the parr, is very good. "The parr," he says, "is a compact fish, with firm scales, small head and eye, and from every appearance a fish come to maturity. The smolt is evidently a young tender fish; its scales come off with the slightest touch; its head and eyes are large, like other young creatures that are destined to be of much greater size. Both have forked tails, red spots, and what Mr Hogg calls blue finger marks. But the greatest and most decided difference is this, that parrs are found in our rivers at all seasons of the year, and smolts, or what we reckon salmon fry, only

from March to about the middle of June. The difference between the fish, even in this respect, is almost sufficient to prove that they are not the same species." Mr Buist and Mr Hogg are, in opinion, as wide as the poles asunder. They both join heartily, apparently, against what they style "Cockney anglers." But the strife has a wider range, for Mr Hogg puts a question into the mouth of a correspondent of the *Agricultural Journal* to this effect :—"What can be the salmon's motive for ascending the rivers at that period?" and he answers his own question thus :—"I answer, that I always understood it to be in order to get quit of the sea-louse, whereas your correspondent jocularly affirms 'that these lice exist only in the *heads* of the stake-net owners;' a base insinuation! though, I believe, it is acknowledged that a fish diet has the effect of engendering these vermin on the human species." Was the school-master abroad in 1831?

The late Professor Wilson made the Ettrick Shepherd discourse very eloquently of whisky punch, and some other congenial topics, in his *Noctes Ambrosianæ*; but so far as memory goes, he did not put speeches into the mouth of the Shepherd, representing that gentleman as a master of natural history, and particularly of that division of it known technically as vertebrate animal. On searching the pages of Lowndes, no notice appears of any work on fishes by Mr Hogg, although a numerous and complete list of his other works are inserted. When a judge uses a few transient words

“sublime theory.” It was a very indifferent way of solving any difficulty about parr, to “publish among poachers, and on the smithy doors, that all the fish that were back-halved in the tail were mine: that I would not claim the fish as my property, but whoever would bring me word of such a fish having been taken, and seen by witnesses, I would give him a dram.” The Shepherd’s description of the sea trout is amusing,—“They are handsome, coarse-tasted fish, but very fat; with a short, broad tail—not swallow-tailed, like the salmon—dark grey on the back, and bright below. I see huge ones frequently sold in Edinburgh market for salmon.” The Shepherd’s notions of constitutional law are evidently as hazy and weak as his theory of parr. To prevent parr being caught, “let plenty of men,” says he, “be duly authorised, through all the towns and villages in the country, and wear a staff or badge of authority, giving them a right to search every angler’s basket; and for every parr or smolt found there, let the angler be fined a sixpence, *which shall belong to the officer, and be his sole remuneration.* There are plenty who will take it in hand, and be glad of the deputation—a twenty doener would be a fine prey for him.” The editor of the *Journal of Agriculture*, naturally enough, does not put his *imprimatur* to Mr Hogg’s lucubrations.

We have now arrived at that stage of the work where it is suitable to take notice more at large (than is done at a previous page hereof, viz., 34) of the next salmon

statute immediately following that of the 7 & 8 Vict., cap. 95, which has hitherto been distinctively named the *Whitling* Act. The new Salmon Act, 25 & 26 Vict., cap. 97, is not without its own peculiarities; and it is worthy of special notice, that the salmon statute 7 & 8 Vict., cap. 95, is not so much as once alluded to in it, or in any of the subsequent Scotch salmon statutes which have passed through Parliament since the 9th August 1844, up to and including the one dated the 31st July 1868. It was passed on the 7th August 1862, and was promoted and carried through Parliament also by the Tay Fishery Board, in consequence of Mr Sheriff Graham's decision, already recorded, and to get rid of the effects of that judgment. They wished, like Pythagoras, to acquire and exercise universal dominion, and, also like him, they joined legislation to their philosophy. Its preamble is this:—"Whereas it is expedient that the Acts relating to the Salmon Fisheries in Scotland should be amended, and further provision should be made for the regulation of fisheries, the removal of obstructions, and the prevention of illegal fishing: Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows." Section 1 describes the title of the Act—"The Salmon Fisheries (Scotland) Act, 1862," so that it neither applies to England or Ireland. Then

section 2 interprets the language used in the statute, whereby the public learn that “ ‘salmon’ shall mean and include salmon, grilse, sea trout, bull trout, smolts, parr, and other migratory fish of the salmon kind.” It will be observed that “whitling” is quietly dropped out, and the word “parr” substituted in its stead, along with the catching phraseology, “and other migratory fish of the salmon kind.” Do these words make the description more complete? “Migratory” just means changing from place: and don’t all fish change from place to place, as it suits their taste? There is one fish, named *Anabas testudineus*, or “tree-climbing fish,” which, for the sake of variety, leaves the water and climbs trees; and jugglers carry them about to amuse the people. Again, eels are found oftentimes in ponds, far away from running streams, and have never been placed there by the hand of man;—in short, that fish has the power of travelling on land for considerable distances, and when some of the species find their quarters in the running streams uncomfortable, they take in a good supply of water, and journey landward to some piece of water they like better. Dr Plott, in his *History of Staffordshire*, says that they pass in the night across meadows, from one pond to another; and Mr Arderon (in the *Transactions of the Royal Society*) gives a distinct account of small eels rising up the flood gates and posts of the water works of the city of Norwich. They are migratory,—so are all fish. The only solution of the difficulties appertaining to salmon, is to

describe fairly, and in a common-sense manner, what is meant by "fish of the salmon kind." To proceed piecemeal, adding and subtracting every now and then some member of the trout species, is a very dangerous kind of legislation. An author, speaking of trout, uses these words:—"Under this name (trout) may be ranged various members of the salmon family, clearly distinguishable from the noble fish that stands at their head." Then he says, the salmon trout is next in value to the salmon itself. The common trout, again, varies so considerably in appearance in different localities as to lead to the supposition that several species exist; and it is only necessary to peruse Mr Stoddart's description of trout, in the second edition of his *Angler's Companion*, published in 1853, to be thoroughly convinced of that fact. His observations at pp. 250, 251, 252 of his book are deserving of the attention of Members of Parliament. He justly complains of the abuses of legislation, and of *inferior species* of fish being "bundled up together with the true salmon." But are the statutes of the realm to be made prolix and undefinable to meet the diversities of species created by the Divine Being? What is known as the grey trout—often called the bull trout, or roundtail—is distinguished from what is known as the common trout by several specific peculiarities; and no doubt it is distinguished from the salmon by like special peculiarities. Then we have the expression in the preamble, "illegal fishing," which seems to require interpretation much more

than "Commissioners," "Clerk," "Justice or Justices," "Secretary of State," "Proprietor or Proprietors," "Bye law and Bye-laws," "Fisheries and Fishery," "River," "Valuation Roll." Penalties follow breach of law, and therefore the law should be clearly defined. Section 11 enumerates various acts as being offences; but that section is inseparably connected with a previous one, which is infinitely obscure in its phraseology,—viz., section 2, where the terms "parr and other migratory fish of the salmon kind" are used. What interpretation is to be put on the pronoun "other," in connection with the words "salmon kind?" As if these difficulties were not enough, the framers of the Act go on to provide that the District Board may, "with the consent of all the proprietors of salmon fisheries in any river or estuary, adopt such means as they think fit for preventing the ingress of salmon into narrow streams or tributaries, in which they or the spawning beds are, from the nature of the channel, liable to be destroyed; but always so that no water rights used or enjoyed for the purposes of manufacture, or agricultural purposes, or drainage, shall be interfered with thereby." Such sort of legislation reminds one of the facetious controversialist who promised to drink up the sea, provided his opponent would first stop all the rivers from running into it. If legislators would study geology before dealing with rivers, they would be a little more cautious. Thomas W. Jenkyn, D.D., F.R.G.S., speaking of atmospheric waters in causing land-slips, writes—

"They prove that water may be regarded as one of the most powerful and subtle agents which nature wields, and that its activity produces some of the greatest changes, and some of the most remarkable phenomena, in physical history." Farmers who happen to have fields and crops bordering on these dammed-up narrow streams or tributaries, would soon find out that. The statute gives *them*, however, *no voice* in the matter. It is only proprietors of salmon fisheries who can be approvers or dissenters.

It is clear the trout and salmon have fallen on hard times, because machinery which will stop a salmon going into a narrow stream or tributary, will debar the trouts from getting out. The perforated zinc merchants and mechanics will be in complete ecstasies at the profits which they will realize by putting such obstructions into the mouths of narrow streams and tributaries, after the fashion of the famous Stormont-field pond. There will be a perennial supply of labour and work, for, when the storms set in, and the floods descend, the barriers will be constantly swept away, fully realizing the old Scotch saying, "It's an ill wind that blows naebody gude." The fishes alone will swim in sackcloth and ashes when such a horde of barbarians invade their watery domains. The Commissioners appointed by the Secretary of State must rejoice heartily too, for they will require to superintend the erections, which will engage them, at least, the better part of years—and they have £3 per day to console

themselves with. The assessment levied under the statutes will be sure to lessen rapidly under the novel expenditure of "Expenses incurred in obstructing the ingress of salmon into the narrow streams and tributaries." The collapse of the money-bags in the methodical dream of Addison (*Spectator*, No. 3) will appear harmless beside it. Mr Buist rejoices that the *assessment is general*, as he well may. "Fortunately, the new Act authorises a general assessment, which, however, is but a mere trifle when levied on a rental of £17,000." He forgets the Morayshire floods in 1826. He forgets that, even in this country,

"Loud roars the dreadful thunder,—
The rain a deluge showers;
The clouds are rent asunder
By lightning's vivid powers."

The last salmon Act which was passed for Scotland is the statute 31 & 32 Vict., cap. 123. It is dated the 31st July 1868, the preamble being, "Whereas an Act was passed in the 25th and 26th years of Her present Majesty, cap. 97, intituled, 'An Act to regulate and amend the Law respecting the Salmon Fisheries of Scotland;' and another Act was passed in the 26th and 27th years of Her present Majesty, cap. 50, intituled, 'An Act to continue the powers of the Commissioners under the Salmon Fisheries (Scotland) Act until the 1st day of January 1865, and to amend the said Act;' and another Act was passed in the 27th and 28th years of Her present Majesty, cap. 118, in-

titled 'An Act to amend the Acts relating to Salmon Fisheries in Scotland ;' and it is expedient that the recited Acts should be amended, and further provision be made with respect to Salmon Fisheries in Scotland : Be it enacted, by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows ;" and then section 1st bears, "This Act may be cited for all purposes as. 'The Salmon Fisheries (Scotland) Act, 1868.'" Such vigour and rapid resolutions to amend all crudities was never before seen. It is nothing but amend ! amend ! amend ! It is pleasant to see how successful at last the framers of the different statutes have been in defining emergent obscurities. One short line and four words have done the business, as is betokened by section 2,—“The recited Acts, and this Act, shall be read and construed as one.” The poor trout will turn up the white of their eyes at receiving such relief as that. The herculean task of obstructing the mouths of narrow streams and tributaries remains in all its glory, as well as other manifestly defective provisions. Thus, while the framers of the statutes profess to cure imperfections with one hand, they really adopt and perpetuate them with the other hand. One would think they often conclude sophistically in that fallacy which is called *a dicto secundum quid ad dictum simpliciter*. The king and queen of fish will never be able again to visit in state

their humble kindred in the narrow streams and tributaries, which, no doubt, will be a cruel deprivation to them, because, when his and her fishy majesty are hungry, they are not very punctilious, but just gobble up a parr or trout, whichever first comes across their path,—even their own brood are not exempt from such a fate. Most fortunately for the English and Irish anglers, all these extraordinary amended Acts do not extend southward, or across the Irish Channel. Section 41 provides against such an event, by these words,—“This Act shall not extend to England or Ireland.” There is no specification of the kind of fish which it is unlawful to take, in this Act. That information is only embodied in the statute dated 7th August 1862, 25 & 26 Vict., cap. 97, already referred to at some length.

We now proceed to notice the litigated case of the Tay Fishery Board *v.* Miller, in 1869. It was first decided by Sheriff Barclay against the Tay Fishery Board; then it was appealed to the Justiciary Court, and the presiding judge—Lord Jerviswoode—remitted back to the Sheriff to enquire into the several matters raised under the complaint, which being done, a new decision was pronounced by the Sheriff against the Tay Fishery Board. Then followed another appeal by that Board to the Justiciary Court. The presiding judges—the Lord Justice-Clerk (Moncrieff) and Lord Cowan—this time decided in favour of the Board. The circumstantialities of the whole litigation must,

however, be given in detail, along with the proof led, to enable the reader to form a correct idea of the dispute. The Sheriff was well entitled to doubt of the prudence of attempting, in a law court, to decide a disputed question relating to Natural History, and that notwithstanding what is contained in the *Quarterly Review*, *Edinburgh Review*, &c. Were these effusions not the work of Mr Russel, editor of the *Scotsman*? To his book, entitled *The Salmon*, published in 1864 by Edmonston & Douglas, Edinburgh, there is a note attached in these words:—"Note.—Portions of this volume have appeared in the *Quarterly Review*, *Blackwood's Magazine*, the *Edinburgh Review* and the *Scotsman*. *Scotsman* Office, Edinburgh, May 1864." Mr Russel refers both to Mr Hogg's and Mr Buist's sentiments. We see that Mr Hogg's novel theory of parrs being the fry of salmon astonished Mr Buist in no ordinary degree; so he deliberately wrote in the *Quarterly Journal of Agriculture* for March 1832,— "This theory has not only astonished me, but many a veteran fisher and angler in the Tay, and I dare say it has done so in the other rivers of Scotland. I shall examine Mr Hogg's experiments, to prove his theory by and by. In the meantime I may observe that the little fish known as a parr with us, though very like the smolt in appearance, yet differs from it in many essential particulars;" and he then goes on with his examination, and finds the theory of shepherd Hogg to be "nonsense," and "quite heretical," so much so

that "on the 26th Nov. this year, I had a full grown healthy parr, with firm scales, brought to me by one of our men who watch the rivers. It was taken off a set line, and was come to full maturity for spawning, as the milt was running from it like milk. Had a 'Cockney angler' caught this fish in May, he might have mistaken it for a smolt, as it was so like one in many respects; but the time of year it was taken proves, without the shadow of a doubt, its identity as a parr." Mr Buist had been, before 1832, more than "twenty years extensively concerned in the Tay and other fisheries," so his opinions were not those of a novice.

Mr William Blair, writer in Perth, presented, on the 30th August 1869, a complaint (under the Summary Procedure Act, 1864), setting forth that he was authorised to prosecute, on behalf of the Tay District Board, Robert Miller, pointsman, residing at 81 Pomarium Street, Perth, for contravening the Salmon Fisheries (Scotland) Act, 1868, and sec. 19th thereof, "In so far as, upon Saturday the 26th June 1869, or about that time, the said Robert Miller had in his possession nine smolts or salmon fry, and that at or on the banks of the stream called the Mahoney, a tributary of the Earn, a tributary of the Tay, and at a part of the said stream at or near the farm of Kirkton, in the parish of Trinity Gask, and county of Perth, and the said nine smolts or salmon fry were seized in virtue of said Act;" and then the complaint prays that Miller

should be convicted of a contravention of the Act, and found liable to pay and deliver to the said William Blair a sum not exceeding £5 for the said offence, and to forfeit the said smolts or salmon fry.

On the 6th September 1869, a diet was fixed, and the complainer and the respondent, accompanied by agents, attended, when a preliminary plea was stated, that it was necessary, under the section founded on, to allege and prove wilful possession of the fish. The Sheriff, however, repelled that plea as preliminary, and reserved it on the merits, and the respondent then pled not guilty. Another diet was then fixed, viz., 15th September, for the complainer examining his witnesses. At that diet he examined three witnesses, viz., (1,) John Campbell, river watcher, Strathblain ; (2,) Alexander Croll, superintendent of salmon fisheries ; (3,) Peter Marshall, Stormontfield ponds. And at the same diet, the defender examined one witness, viz., William Dick, railway pointsman, Perth. Parties' procurators were heard on the merits thereafter, and avizandum made with the process. The Sheriff then pronounced the following interlocutor or judgment :—

PERTH, *8th October 1869*.—Having heard parties' procurators, and made avizandum with the complaint and the proof,—Finds it proved that, on the day libelled, the defender had in his possession certain fish commonly known as parrs, but which are not named in the prohibitory and penal clause libelled ; but finds it not proved that he then had any fish known as smolts, the only fish named in the same section of the statute libelled, and de-

clines to inquire, and decide the question in natural science, whether parr be, or be not, salmon fry: Therefore dismisses the complaint, and decerns against the complainer, in favour of the defender, for one pound of costs, with the expense of extract.

To which the Sheriff appended an explanatory note embodying his own views.

Note.—This is a complaint at the instance of Mr Blair, acting for the Tay District Board, against Robert Miller, laid under the 19th section of the Salmon Fisheries Act, 1868, setting forth that, “in so far as, upon Saturday, the 26th day of June 1869, or about that time, the said Robert Miller had in his possession nine smolts or salmon fry, and that at or on the banks of the stream called the Machony, a tributary of the Earn, and at a part of said stream at or near to the farm of Kirkton, in the parish of Trinity Gask, and county of Perth, and the said nine smolts or salmon fry were seized in virtue of said Act.”

The proof is that the accused was found on the banks of Machony on the day libelled. A river watcher asked him what take he had. The accused readily answered that he had taken some eels and a few small parrs. On being asked to show the contents of his basket, he unhesitatingly did so. In addition to the eels, there were found nine small fish, all of which were captured by the watchers. These were exhibited in court in two bottles. An additional third bottle was shown, merely by way of contrast, containing a larger fish, which was sworn to be a yellow trout, and was admitted not to belong to the salmon family. Five of the smaller fish were sworn to as being parrs, and four in the second bottle as belonging to a migratory class, which might be the spawn of sea trout or of the bull trout, but which were also sworn to be of the salmon tribe. These facts were sworn to by one river watcher and the river superintendent, but more especially by the keeper of the breeding seminary at Stormontfield, so well and widely known as “Peter of the Pools.” He entertained no doubt as to the five in one of the bottles being identical with those which for many years have been under his fostering care and nurture as parrs; but as to the four in another bottle,

not coming under his guardianship, he could only state that they were of a migratory kind, and fell under another class, which he considered not to be parrs, but, nevertheless, to be of the salmon kind. The complainer offered further scientific evidence to establish that all the nine fish were salmon fry; but, from the opinion entertained by the Sheriff, this further evidence was not allowed. To admit such evidence appeared to the Sheriff open to the grave objection that it was to constitute an offence *ex post facto*, and that the very necessity of having such evidence, established that there was no obvious offence under the letter of the statute.

The solicitor for the defence, on this evidence, took two pleas against conviction—

1st. That it had not been proved that the accused had in his possession the parrs or other fish wilfully, thereby meaning that it must be proved that he was in the knowledge that the fish he had in his basket were smolts or salmon fry. The evidence showed that, whilst he in his ignorance thought all the nine fish to be parrs, only five fell under that name; and there was no proof that he knew that any of the nine fish were salmon fry. And,

2d. That the fish in his possession were not proved to be smolts or salmon fry, which are the only words in the clause libelled.

The Sheriff is certainly not much enamoured with the phraseology of the 19th section of the Act 1868, which is the one libelled on. The first question is whether the word “wilfully,” at the commencement of the section, overrides and qualifies the particular offence libelled—that being not the taking, but the having in possession, smolts or salmon fry. It is clear that the term wilful was not meant to override the whole clause, seeing that it is shortly afterwards twice repeated; indeed, in one part of the clause there appears the gross absurdity that it is made an offence to place any devices or engine for the purpose of obstructing the passage of the young of salmon: and it is equally made an offence, according to strict grammatical reading, “wilfully to injure that device or engine.” On the whole, however,

it does appear that the qualifying word, "wilfully," does reach the act of possession. (See—25th May 1868, Johnston—Cooper's Justiciary Reports, 41). It is next to absurd to suppose that a person merely having possession of the forbidden fish should be dealt with more harshly than one who actually captures the animals; so that it would be necessary to prove that a person wilfully caught the forbidden fish, but not when a party may innocently and in ignorance be in possession of the sacred fish—it may even be in the act of cooking or of mastication. A man fishing can scarcely be supposed to do so in ignorance, and against his will; and, if on a salmon river, he must be held culpable if he, even in ignorance, takes any fish of the salmon kind. But a person may have possession of fish, not only in ignorance of the class to which they belong, but even that he had in his possession fish of any kind.

The Sheriff is of opinion that it is perhaps not necessary to libel wilful possession as pled *in limine*, yet that before conviction either for taking or possessing fish of the forbidden species, it must appear that the accused party offended culpably, and not in ignorance—that is, that he knew, or under the circumstances should have known, the kind of fish he captured or had in his possession.

There is more difficulty in the second question. The 19th section expressly defines the offence to apply only to smolt or salmon fry. The marginal index (which note very properly is held no part of an Act, and is often found even contradictory to the text) in this instance makes use of the terms "the young of salmon."

The words of the text are not cumulative, but descriptive. The law does not say smolt *and* salmon fry, but smolt *or* salmon fry,—that is, smolt *being* salmon fry, or, as the margin has it, "the young of salmon."

† The proof showed that the accused party here held possession of a certain number of parrs, and vaguely knew them by that given name; but it must be further shown that these are not merely "the young of salmon," as in the margin, but are either "smolt or salmon fry," as set forth in the text and in the com-

plaint. Now, the Act 1862, (which appears still in force), declares salmon not only to include salmon, (certainly a most Irish conclusion), but, in addition, "grilse, sea trout, bull trout, parrs, and other migratory fish of the salmon kind." This, certainly, is very comprehensive, and, with the exception of eels and flat fish, appears nearly to include all river fish whatever. The complaint is not for having in possession salmon (and unless when in a foul state such is not an offence), but it is having in possession smolts or salmon fry, and the offence applies to the whole year, open time as well as close time, and therefore is most stringent and severe. Again, it will be noticed that the interpretation clause distinguishes smolts from parrs, consequently it does not at once follow that the accused has contravened the words of the statute, since, whilst smolts are expressly mentioned, parrs are not. The framer of the statute knew and had provided for the distinction. Therefore, when he only sought to cast his net of protection over smolts as salmon fry, he must be held to have permitted the lucky parr to escape through the meshes of his legal net. This, then, admittedly drives the complainer, if it be competent, to prove, as he offered to prove, that parrs, which confessedly are not smolts, are the "fry of salmon."

By the first Act of the multitudinous series (1828), section 4, which perhaps stands still unrepealed, the offence of possession is made applicable to "spawn, smolts, or fry of salmon;" and let it be observed that "wilfully" is there expressly repeated before the enactment as to possession. Reading the whole section of the Act 1868, in connection with the 4th section of the Act 1828, the Sheriff-Substitute is of opinion that what is meant to be included are not parrs, but smolts and salmon spawn, and spawning beds; and that the 19th section does not apply to parrs that have reached a higher state of progress than mere fry. Dr Johnston defines "fry—the swarm of little fishes just produced from the spawn." "Spawn," the Doctor defines as "the eggs of fish." The *Imperial Dictionary* (a work of great scientific authority) defines fry, "a swarm or crowd of little fishes, so called from their crowding, tumbling, and agitation."

Penal statutes are always, and most justly, strictly interpreted

for liberty, and against prohibition and coercion of freedom. The salmon statutes are obtained for the protection of property in salmon against the encroachments of the public. These statutes are framed and promoted by the proprietors, and they ought to be so distinctly expressed that the public may clearly know the limits of their rights; and the restraints thereon in favour of the proprietors of fisheries ought to be so clear, that he who "runs may read." Parties ought not to be punished through mere ignorance of a law so vague as to require scientific knowledge and interpretation.

A sketch of the Act with reference to the nomenclature of salmon will illustrate the meaning of the Sheriff-Substitute. The first of the series 1828, included "salmon grilse, and other fish of salmon kind." In 1844, a party was brought before the Sheriff-Substitute (who is now judging of the present case) charged, under the Act 1838, of being in trespass with intent to kill fish, as particularly enumerated in the Act. It was proved that the accused party had taken whitlings, not named in the statute. It was thereon maintained for the complainer that whitlings were of the salmon kind. Contradictory evidence on this question was given; and though the evidence certainly preponderated for the complainer, the Sheriff-Substitute refused to convict. His decision will be found fully reported in the *Dundee Law Chronicle*, vol. 2, p. 133. This judgment was wisely acquiesced in, and the proper remedy was taken the very same year by the Act 1844, by expressly mentioning whitling in the enumerated class.

In 1858, a complaint was presented to the Sheriff-Substitute (Grahame) at Dunblane, against a person for taking parrs from the river Allan. There, again, contradictory evidence was given as to whether that fish was of the salmon kind, and the judge dismissed the complaint on similar grounds as the Sheriff-Substitute at Perth had previously done. His able Notes will be found at page 124 of the same volume of the *Law Chronicle*. The fishing proprietors wisely acquiesced, and once more met the difficulty as they did before with smolts. The Act 1862 extended the term salmon so as for the first time to include itself,

and also grilse, sea trout, bull trout, smolts, and parr, and other migratory fish of the salmon kind. Under this extension, there could now be no doubt that, in all sections which impose penalties for interference with salmon, parr is included.

But the Act 1868 introduces a new and highly penal offence, and which goes far beyond the protection of salmon in its advanced stages. It is limited only to one of the enumerated names, "smolts," with the addenda *or* (not *and*) salmon fry, which is merely a designation of smolts. If it was meant to extend the penalty to a farther and undefined extent, and to include parrs or any other class of salmon fry, or the young of salmon, within the clause, and under the prohibition, it should have been so enacted, and the question not left to be ascertained by scientific proofs. Suppose the clause had simply been for the protection of salmon fry, or the young of salmon, without the mention of smolts or any named fish, would it have been permitted that a person could be prosecuted and punished for interference with smolts, parrs, or any other fish which could have been proved by scientific men to be the rising generation of the salmon family, from the ova to the oven? The Sheriff-Substitute, therefore, feels himself constrained to repeat his views in the smolt case, confirmed by his brother at Dunblane in the case of the parrs. The simple ground of his judgment is that, in the penal clause founded on, parrs are not mentioned, and he declines to inquire and decide the scientific question, whether salmon parrs are salmon fry or the young of salmon. The proprietors have their remedy by expressly including parrs in the section amongst salmon fry, and to leave no room for escape from the penalty.

It may be added, that the solicitor for the accused urged what appeared in evidence, that his client was not a salmon poacher, or even a habitual fisher, but only on this day had obtained leave of absence, and for that day only had become a disciple of Isaac Walton.

His ignorance of the finny tribe was shown by his frankly classifying the whole of his nine captives under the section of parrs, whilst the more practised eye of "Peter of the Pools" in-

dignantly repudiated four of the number from that high dignity, and placed them under a mongrel species, not of the pure breed. Nevertheless, had the word parr been found in the section libelled, then, whilst such considerations ought to have had their weight and effect with the prosecutor, they could have had none with the judge, farther than in modification of the penalty.

The complainer, Mr Blair, then presented an appeal to the next ensuing Justiciary Court against the foregoing judgment. His appeal was presented on the 13th October 1869, and was served by an officer of court on Miller on the same day. The reasons Mr Blair embodied in his appeal were these:—(1.) That the expression, “salmon fry,” used in the section of the Act libelled on, and which has frequently been used in Acts of Parliament connected with the Fisheries previous to and since the Act of 1696, “against killers of black fish, and destroyers of the fry and smolts of salmon,” has a well-known and definite meaning, and means simply “the young of salmon,” as mentioned in the marginal note of said section. (2.) That it is now well known, as a matter of fact, that the parr of our salmon rivers are really the young of salmon, or fish of the salmon kind, and in consequence, “parr” have been classed among salmon by the recent Salmon Fishing (Scotland) Act, 1862, which is incorporated with the Act of 1868 libelled on. (3.) The appellant proved that *five* of the fish produced at the trial were the young of the *real salmon*, and that four were the young of other fish of the salmon kind, such as the sea trout, bull trout or whitling, though

all these, before arriving at the smolt state, are generally known as parr. (4.) That although proved to be the young of salmon, the Sheriff-Substitute improperly held that this was not equivalent to proving that they were salmon fry. (5.) When the prosecutor desired to re-call his witnesses in order to show that the Sheriff-Substitute misunderstood the nature of the evidence led, the Sheriff refused this, apparently on some mistaken idea that the prosecutor desired to lead, not only additional, but scientific proof. The appellant, however, did not ask for what is commonly understood as "scientific proof," but merely a re-examination of the witnesses adduced, to clear away doubt as to the facts really proved, seeing there was no record of the evidence taken which could be referred to at the debate, and the statements of the witnesses came to be a matter of dispute on various points. (6.) The expression "wilfully," used at the commencement of the section of the Act founded on, does not reach or apply to the offence of having smolt or salmon fry "in possession." The Sheriff-Substitute admits that the expression "wilfully" does not override the whole section—how then can it apply to the offence in question, which is stated in the *middle* of a number of other offences, to which the expression does admittedly not apply? Section 20 of the Act is construed in the same manner as applicable to the possession of unclean salmon. (7.) Even although the expression "wilfully" did apply to the offence in question, the

respondent could reap no benefit from it in the circumstances proved ; for every person fishing in a salmon river must, as the Sheriff-Substitute has himself stated, be held wilfully culpable if he takes and retains possession of forbidden fish. The respondent's habits and experience as a fisher or angler, so gratuitously commented on by the Sheriff-Substitute towards the end of his "note," were points not submitted to probation. (8.) Where the defender pleads his own ignorance, as in this case, to show that he did not take the young salmon or fry "wilfully," and knowing them to be such, if the expression "wilfully" is, in such a case, to be given effect to at all, the proof of ignorance should be thrown on the respondent, as it is impossible, in any case, for the prosecutor to prove the extent of another man's knowledge. The respondent did not show his ignorance, as stated by the Sheriff-Substitute, by classifying the whole nine fish as parr—*he was quite right in doing so*, and the witnesses for the prosecutor testified to the same fact. But this is one of the many points on which the Sheriff has misunderstood the evidence, apparently from his own want of knowledge of the distinctions among the "finny tribes."

The appeal was discussed in the Justiciary Court, at Perth, on the 5th May 1870, by counsel from Edinburgh, when Lord Jerviswoode, one of the judges on the said Circuit, "ordered and adjudged that the judgment complained of in the said appeal be recalled *in hoc statu*, and remitted to the said Sheriff-Substitute

to enquire into the several matters raised under the complaint, and thereafter to dispose of the cause, and of the whole matter of expenses so far as not herein-after dealt with." The appellant was allowed the expenses of the appeal.

The Sheriff-Substitute, on the 29th June 1870, pronounced an interlocutor applying the remit, and fixed a diet of proof—which was afterwards altered, by consent, for a new diet for the 1st July 1870. Proof was then led by both the contending parties.

PURSUER'S PROOF.

PETER MARSHALL, deponed,—I was examined before with reference to this case. I saw the parr then produced in bottles. There were nine of them. A yellow trout was also produced. With regard to these nine, I considered the bottles with the five fish were the young of the pure salmon, and the other four in the other bottles were the young of the sea or bull trout. I saw the yellow trout. I could easily distinguish them.

Mr M'LEISH objected to proceeding further, and said the question was whether or not they were "salmon fry."

By Mr BLAIR.—In regard to the whole nine of these, I classify them under the name of "parr." They are also called the "fry" of salmon. These fish are called "fry" as soon as they come out of the egg, and continue so until they become smolts, and go to the sea. They don't assume "parr" mark until the end of three months. I have heard "smolt" called fry. This name is applied to them when in multitude; but if I had a single parr before me I would'nt call it salmon fry. The five were the same as I rear in the pond. I rear pure salmon in the pond. I have compared the parr in the river with those reared in the pond,

and I have no doubt in saying, from years of experience, that the young of salmon are salmon fry.

By the SHERIFF.—Some persons call smolts salmon fry.

By Mr BLAIR.—Smolts at that time assume a silvery colour which they had not before. As soon as they can get to sea they go. They pass through three stages,—(1), when the egg bursts ; (2), till the egg forms itself into a bodily shape—that takes six weeks ; (3), in another three months it grows into parr ; (4), the smolt. In the ova we don't call them salmon fry.

By the SHERIFF.—That is four stages.

By Mr M'LEISH.—I was a fisher before I went to Stormont-field ponds. I have been there seventeen years. The term "fry" is used as a common term in our district. Smolts are called fry sometimes. I have heard it applied also in England. The fish, after being three months alive, change at the parr stage. The peculiar marks after the change from the parr stage are black marks on the side. Smolts and parr are in the river at the same time. I maintain that parr and smolts are exactly the same species. There is no difference betwixt them. They are bred of the same fish. I have got a pike, a yellow trout, and a minnow in my pond. I do not think fish of different species will spawn together. I have bred grilse and sea trout together. I don't know the result. I have kept parr, to see what progress they made, for five years. They changed into smolts. They were kept in the filtering pond for two years as parr, and at the end of two years they became smolt. I have tried the experiment with a parr. The experiment was merely tried with smolts to see how they would progress.

By the SHERIFF.—They were taken out of the pond and put in the filter.

By Mr BLAIR.—I am certain I did not breed any pike in the pond.

By the SHERIFF.—The river overflowed into the pond, and I suppose it got in that way.

By Mr M'LEISH.—There are fish called "parr" of the sea trout, but not of the common trout. The spots on the parr of salmon vary. I have seen eleven, and I have seen as many as

sixteen. I have never counted the number of spots on the parr of trout. It is difficult to tell the difference between the parr of trout. The difference of fin in the yellow trout is that the dead fin is orange, and the other fin is white. I have never seen the parr of sea trout.

By the SHERIFF.—When we talk of yellow trout we never call them “parr”—we merely call them young trout.

By Mr BLAIR.—When we rear one season’s ova, none go the first season after they come out of the ova. They go the next season. About a half of the same hatch only go, and the larger number remain in the river. There will be in the river both parr and smolt of the same year’s hatching.

Mr BROWN, drawing-master, Seminaries, deponed—I pay a good deal of attention to bringing up young salmon. I commenced in the year 1833. I recollect of the opening of the Stormontfield ponds. I am there nearly every week. I have frequently marked the fish, and caught them again as grilse. The different stages are—(1) eggs, or ova; (2) the little fish that comes out of the egg, with a bag; (3) this bag is absorbed in about six weeks; (4) then it is the parr. After this, it continues for some time until it becomes a smolt. They become parr sometimes in one year, sometimes in eighteen months, and I have had them for four years before becoming parr. There can be parr and smolt in the river at the same time, and of the same year’s breeding. They are called fry after they lose the bag, and until they go down the river. A fish is a parr, or a young fish, until it becomes a grilse or salmon. They are all called “fry” until they leave the river. The name “fry” includes all the stages before the grilse—smolt as well. We have compared the fry in the ponds with those in the river. These parrs which the boys catch in the river are the same as are reared in the ponds. A parr could not go into the sea—it would die in a short time. The parr never makes seaward until it becomes a smolt. You can’t tell a parr from a smolt until it has the scales. A man inexperienced may not know a parr from a smolt. It is difficult to know them from the common trout.

By Mr BLAIR.—It is difficult to distinguish the yellow trout

from the parr in different stages. The parrs are very like the burn trout, and might be mistaken by people who do not know.

By the SHERIFF.—I would not confine the word "parr" to salmon species. The young of the common trout is just as much a "parr" as the young of the salmon. The Stormontfield ponds have had them four years before they became smolt. Spawn is when it comes out of the egg; and it becomes fry when the fish is able to do for itself—that is, swim about.

DAVID BURNS, farmer, Stanley.—I have had considerable experience with breeding salmon. I was some time in Ireland rearing salmon. We wanted to introduce them into some lakes and rivers. We succeeded. Besides this experience, I have been very much interested in the Stormontfield ponds. I have watched the different stages, and I have found that in about three or four months the shell bursts. After the shell bursts, the parr are very small, and have a bag. Before they absorb the bag—about four or seven weeks afterwards—they are called "parr." With the bag, they are called "young parr." If there was one shown me I would call it a "parr;" but if there was a number they would be called "salmon fry." They are called "fry" until they are grilse. Smolt are also "fry." This expression is used for young salmon. There is no stage between the smolt and grilse. There is no particular limit to the word "fry," until they are smolts.

DEFENDER'S PROOF.

WILLIAM CLEMENT deponed—I reside at Alva. I have been a fisher for upwards of thirty years. I have studied the habits of salmon for the last twenty years. I know the fish called "parr." It is quite a different fish from smolt, and is not produced from the same parentage. I know this by an experiment which I made. I have kept them in a well for eight years. They did not grow larger. They kept about the same size and fatness. I tried the same experiment with smolts. They did not do so well. They grew long and thin. Their habits were different

from parr. My opinion was that smolts required to migrate. It is my opinion that "fry" are not young salmon.

By Mr BLAIR.—It is my opinion that parr are the young of yellow and sea trout. I have seen a yellow trout and sea trout spawning together, and from that circumstance I came to the conclusion that parr were the young of these trout.

By the SHERIFF.—My opinion is that there are no parr of salmon on any river.

PETER M'NEIL deponed—I reside in Perth. I have been acquainted with fishing for about thirty years. I am known as the "Otter," on account of my fondness of fishing. I know all the habits of fish. I know the fish I call a *parr*. A parr never changes into a smolt. It remains a parr, but of different sizes. I never considered it the young of salmon.

By Mr BLAIR.—I have not watched the progress of the growth of a parr.

By the SHERIFF.—My opinion is, that they become smolts when they come out of the egg. I have seen the yellow trout spawn with the parr.

By Mr M'LEISH.—I call salmon fry "salmon smolt." I never call them "parr."

JAMES VOY, Pomarium, Perth, deponed—I know about salmon and their habits. I have been engaged both in line and net fishing for five years. I have had experience of thirty-two years in net fishing. I know a parr quite well. Parr and smolt are not the same kind of fish. Salmon fry I call the smolt. Parr are not salmon fry. I have opened parr, and found roe in the female and milt in the male.

By Mr BLAIR.—I have seen the milt developed to its full state. I was quite satisfied it was roe. I have seen a good many parr with roe. There might be more with the milt than the roe. I have not seen any of these parr reared from the egg. I have seen them different sizes, but all parr. You can know a smolt by the colour, the head, and the flesh. There is a certain season in the year when smolt have got a silvery coat. It is only at this stage that I know them to be smolts.

By the SHERIFF.—It is my opinion that parr are the produce

of bull trout. I am quite certain that there are male and female parr.

By Mr M'LEISH.—I never knew of a smolt having roe and milt. Roe or milt appears in a smolt for the first time when it comes from the sea. I would not be positive of finding parr in the spring with milt. I have found milt and roe in them in November and December.

ROBERT HAGGART, deponed—I live in Perth. I have fished for forty-five years. I know the parr well. I know smolt also. The parr and the smolt are not the same. Parr are not salmon fry. Salmon fry are the smolts going down to the Tay from the breeding ponds. I have got both milt and roe in the parr. I have got them in February with milt and roe in them. I have never examined smolts. I never heard of milt and roe being in smolts.

By Mr BLAIR.—The smolts are different sizes. On an average they would be fully less than my finger in length. They can be known by the head before the scales come on. The scales come off smolts very easily. They are not so dark as the ordinary parr. The marks are almost the same. I have seen these fish in the ponds. I would not call the fish in the ponds "parr." I would call them smolts. I would call all the young salmon smolts from the time they come out of the egg until they go down the river. I have never heard of milt or roe being in a smolt, but I have seen them in a parr.

By the SHERIFF.—A smolt would become a grilse, and a grilse a salmon. There are male and female salmon. I could not say much about how a smolt became a grilse, because that is done down the water. (Laughter.) Parr don't grow out of the parr stage.

ALEX. MACDONALD, dyer, Perth.—I have been fishing less or more all my life. I know the parr. They are different from smolts. The term "salmon fry" applies to smolts. I never heard it applied to parr. I have been once at the Stormontfield ponds. I had some conversation with Mr Marshall. He said that the bank had been broke down, and that the parr could not get in. I understood that he tried to keep the parr out of the pond.

JOHN CROW, weaver, Leonard Street, Perth.—I have been a fisher for upwards of twenty years. I know both parr and smolt. They are different species. I have felt a smolt and parr. A parr at the present season has a milt and roe. Salmon fry are smolts. I have caught parr larger than smolts. I never heard the term “fry” used with regard to parr.

By Mr BLAIR.—I catch the smolt in April. They vary in size. They must be in the river before that time. You will find parr in all seasons in the river, while you will find smolt only in their season. I can’t believe the smolts to have been parr. I once got a parr quite black, and I considered him a foul fish and a matured fish.

THOMAS BELL, weaver, Perth, deponed,—I have been a fisher for upwards of forty years. I know about salmon. I know smolts. Salmon fry are smolts. Parr are not smolts. The term salmon fry has always been applied to smolts. At a certain season there are no smolts; but you will get parr all the year round in the river. I have seen parr go in shoals. Parr approach in their habits to those of the yellow trout. I don’t know whether the smolts went down the river in shoals.

By Mr BLAIR.—I have never fished in burns where salmon could not get. I was not aware that parr are only got in rivers where salmon are found. The smolt are only in the river a short time in the spring. I have always found the parr the whole season over. I have never considered that smolts were parr the year before they went down the river. I have seen parr and smolt in the river at the same time. [The foregoing notes have been taken from the *Dundee Advertiser*, dated 11th July, 1870.]

The Sheriff-Substitute heard parties’ procurators on the evidence led, and on the 12th July 1870 pronounced judgment, appending a note of his views thereto.

PERTH, 12th July 1870.—Having taken proofs for the prosecution and the defence, heard parties’ procurators thereon, and made avizandum with the proofs and whole proceedings,—Finds it not proved that, in the popular and well understood sense, any

of the parrs found in possession of the accused on the day libelled were "salmon fry:" Therefore finds the complaint not proved, and dismisses the same; decerns against the complainer in favour of the accused for expenses, and the expense of extract.

Note.—The remit from the Appeal Court did not specify the issue which the Sheriff-Substitute was now to try. The parties agreed that it was simply whether the parrs, or any of their number, found in possession of the accused, time and place libelled, were "salmon fry," so as to bring him under the penal section of the statute. The complainer adduced three witnesses—the first, the keeper of the breeding beds or ponds at Stornontfield; the second, Mr Brown, of the Perth Academy, an enthusiastic fisher, and writer on the natural history of the salmon; the third had been a practical or professional fisher both in Scotland and in Ireland. All these three agreed that parrs were the young or "fry of salmon." The details of their testimony were, that salmon escaping from the egg carry with them, for a period of about four months, an appendage of a bag, which they then absorb, and assume the status and name of parr. In this state their term of existence is varied—some remaining in the river for one, two, three, and even four years. They then assume the scaly form of smolts, and go to sea, to return next year as grilse. So soon as they emerge from the egg, they are termed fry or parr. They continue that name until they step into the class of smolts. Parrs, however, are not limited to the young of salmon, either in name or in fact. Sea trout, yellow trout, and bull trout also have their respective parrs, and it is sometimes not easy to distinguish members of the three families, the one from the other. One of these classes does not fall within the salmon tribe. The witnesses for the prosecution stated that parr, when single and solitary, is termed "parr," but when in numbers, they receive the name of "fry," as correctly designated by lexicographers. Something, however little, may be set against the weight of the evidence of the complainer's witnesses, in so far as their experiments were chiefly made with ova and its products in ponds and wells, and not in a running stream, which it may be supposed is the more natural *habitats* of fish, and to

which the witnesses of the defender had their attention solely directed. For the defence, there were *seven* witnesses, who were all more or less enthusiastic fishers of long and great experience, and they were all of decided opinion that the parr was a distinct fish, not owing its parentage to the salmon, and, of course, not by any process of development metamorphosed into that fish. They formed their opinion, not on the nice experiments of the complainer's first two witnesses, but chiefly on one ground, that parrs were found in the river all the year round, and did not migrate, whilst smolts were only seen in the river at a particular season in spring; also, that sexual organs were seen developed in the parr. They all agreed that in popular language parrs, which are of different classes, are never called or known as the young of salmon, or "salmon fry," but simply and distinctly as "parr." The Sheriff-Substitute keeps steadily in his view the grand recognised principle, that penal statutes are always strictly interpreted for the offence, and liberally for the alleged offender, and that wherever there is a doubt it must be given in favour of the alleged culprit. If the Sheriff-Substitute were now called on to decide the question as a naturalist seated in the academical chair, he must confess he would yield to the weight of the testimony given for the complainer; that evidence, founded on long and minute experiments by experts, would have led him to decide, as a point of science, that parr, or at least certain of that family, were the young of salmon. At all events, there was sufficient evidence to throw great and grave doubts on the opposite position, that they were all a separate class of one finny tribe. He therefore might, even in the scientific view, have found it safer to leave it, as, until lately, it was even by naturalists held to be an open question in science. But sitting as he does as judge, interpreting a highly penal statute, the strong evidence on the other side has forcibly led him to the conclusion that, in popular opinion and language, parr is still held a distinct species of fish, and not of the salmon kind. He cannot bring himself to settle a scientific question at the expense of the unfortunate defender, who, as well as his seven witnesses, and it is believed the general and unscientific public, are not yet educated up to the

high and nice standard of development of species. It was monstrous to punish Galileo, the astronomer, for denouncing the popular opinion by setting up his own correct theory of the solar system; but it would have been still more monstrous in those days to have punished any of the general public for adhering to the incorrect opinion of Ptolemy which they had been taught and believed from generation to generation. The question here raised is not unlike that in the celebrated Torbanehill case, where a lease of coal was sought to be set aside because that some scientific men were of opinion that the substance actually found underground was not precisely elementary coal, as popularly understood, but some bituminous matter of a different kind and greatly enhanced value. Both the jury and the judges, notwithstanding a host of scientific witnesses, repudiated such nice distinctions, and sustained the lease. Lord Rutherford well observed—"We are not contending about what is the proper definition of coal, or about what the true components of coal are. These are matters of natural history. The question is, What was let under this lease?" This may be thus well parodied in this case—"We are not here contending whether parr is, or is not, salmon fry, or the young of salmon. That is a question of natural history. The question is, Whether parr is under the statute declared salmon fry, or the young of salmon?" If such rule of interpretation was followed in a civil suit, much more ought it to prevail in a criminal prosecution. Parr is otherwise mentioned distinctly, and protected in other clauses of the statute, but not here; and it follows that the framer of the statute knew of their existence, but did not intend them to be included in this highly penal clause. The salmon proprietors can easily remove the difficulty in the next of their long statutory series, by expressly naming parr in this penal clause. It will not do, in this age and country, to imitate the example of the Roman emperor, who had his penal edicts in so small characters, and elevated in so high positions, that the people could not read them, and so, of necessity, offended in ignorance, to the benefit of the public treasury. The Sheriff-Substitute refers to the opinions expressed in his former notes, to which he still, with deference, adheres; and he

has only to add, that he has decided the case judicially, and entirely on the evidence. Unfortunately, perhaps, for himself, he never had sufficient time, and perhaps taste, to cultivate the piscatorial art, and therefore he has no personal knowledge on the subject, no strong prejudice to disabuse, nor any particular predilection or theory to gratify.

The foregoing judgment led to another appeal to the Justiciary Court, at Mr Blair's instance. He appealed on the 20th July 1870. It was served on Miller on the 24th July 1870. The reasons embodied in the appeal itself are the following :—(1.) That the appellant having proved, by competent witnesses, that the fish found in the possession of the respondent were parrs, and were the young of salmon, or salmon fry, the Sheriff-Substitute ought to have given effect to said proof by a judgment against the respondent. (2.) That the prevailing popular ignorance in regard to parr being salmon fry did not warrant the Sheriff-Substitute in refusing to apply and give effect to the Act of Parliament libelled, to the prejudice of the important interests designed to be protected by the Legislature in said Act."

The hearing of the second appeal took place at Perth on the 7th September 1870, before the Right Honourable the Lord Justice Clerk and Lord Cowan, one of the Lords Commissioners of Justiciary, and their lordships, after hearing counsel for both parties, "Found the complaint proved, convicted and hereby convict the respondent of the contravention complained of, and adjudged and hereby adjudge him to

forfeit and pay to the appellant the sum of nine shillings for the fish had by the respondent in his possession, being one shilling for each fish : Found and hereby find neither party entitled to expenses, and decerned and hereby decerns," all conform to an extract of the judgment.

Thus ended the judicial combat betwixt Millar and the Tay District Board. He did not fare so well as the Stormontfield fish, which were fed, as appears by Mr Russel's book, (p. 49), regularly with "boiled liver rubbed small," besides their natural supplies from the surface and the bottom. No wonder that a host of trout and true parr should swim about the entrances to the Stormontfield pond, and dart in when an opportunity offered. Nor would it have been a great wonder if members of the swell mob in London visited the pond, when no less than 300 silver rings were inserted into as many fish, (so Mr Russel relates, p. 55). None of these fish were ever got from the sea—their silver ornaments no doubt proved fatal to them. If any member of the legislature is desirous of finding reasons for being cautious in legislating on the vexed fish questions, the 2nd chapter of Mr Russel's book can safely be recommended as a manual just suited to that end. At page 51 we find this :—"On the *2nd May* 1855," (*i.e.* when, on the one year hypothesis, the time of migration had arrived,) the fish in the ponds were examined by a highly competent committee, including Lord Mansfield and the late Mr James Wilson

the naturalist, and the decision was that they were *not* ready to descend. But on the 19th of the same month, there was a meeting of a portion of the committee, at which it was agreed the fish *were* ready to descend." The eulogy given by Mr Russel to Mr Buist, (page 53), is quite as consistent as all the rest,— "These facts have been most carefully noted and clearly recorded by Mr Robert Buist, of Perth, a gentleman who, from his long experience, his powers of observing, and his caution in coming to decisions, has done much service in the matter of salmon, both as to natural history and commercial interests." It is a pity Mr Russel did not add that Mr Buist had the status of a *proprietor of salmon fishings* in the Island of Skye when he took such a lively interest in the Stormontfield pond; and it is more to be regretted that the diversity of opinion betwixt Mr Buist and Mr Hogg, the Ettrick Shepherd, on the parr question, was not shortly related. It occurred before Mr Buist was appointed superintendent of the Stormontfield ponds. The men whom Mr Russel likes to deal with seem to be Mr Andrew Young of Inver-shin, and Mr Mackenzie of Dundonnell; and on the devoted head of the latter he cruelly pours such a flood of arithmetical calculations and tabulated figures as would frighten any one except a second Sir Isaac Newton. The opinions of these gentlemen on the parr and grilse questions are held by Mr Russell to be "most heretical and unnecessarily contentious,"

In the event of such a frightful catastrophe, the salmon proprietors would stand no chance of making profits such as those described in these words of Mr Russel—“The larger section of the proprietors and their lessees have been, or at least were until the recent legislation, going on competing with each other who should kill most and spare least, careless of the future.” As little need would there be for the “useful little bill” of 1863, (26 Vict., cap. 10,) “prohibiting the exportation of salmon at certain times,” because, when all the rivers were on fire there would be nothing but *broiled* fish—not exportable. The salmon have a severe time of it, for “it appears from the returns, that, measured by value, just about as much salmon was wont to be exported during the illegal as during the legal season; and as the value of foul fish as compared with clean is seldom more than one-fifth, it would appear that by far the greater part of the salmon exported consisted of fish taken in the breeding season, and in the most unwholesome condition, besides having been stolen from the fishery owners, and in violation of laws designed to preserve from extinction a valuable article of food,” (p. 177). This extract is no subject of merriment. The proceeding described is much to be deplored. It proves beyond cavil that vulgar, uneducated and desperate poachers, or idle vagrant poor, are not the only illegal destroyers of fish, but that there are men of place and quality so engaged in the work of destruction. It will not do, however, because one act

of illegality is committed, or many acts of that sort, by private people, for the crown rights to be so used as to exterminate these evil doers by other acts on the part of the Crown of equal destructiveness, which appears to be the substance of Mr Russel's book at pp. 197, 198, 199, 200, and 201. Here it is pertinent enough to ask,—Is Mr. Russel a *disinterested party* in the parr and salmon controversy? Judging from what follows, one would say not. The *Saturday Review* has a notice of Mr Russel's book, which, *inter alia*, has these words,—“He is a veteran writer, the editor of the *Scotsman*, a veteran angler, and is believed to have had a leading share, in company with the Duke of Roxburghe and the present Lord Advocate, in the recent amendment of the Scottish fishing laws.”

The 2nd chapter of Mr Russel's book ends with a passage which it is highly necessary to attend to, because it shows the danger of putting indiscriminately the names of fish in statutes in a hasty manner :—“It will be understood that all or most of all that has been said here has reference only to the *salmo salar*, or true salmon. Beyond that, in the questions about ‘fish of the salmon kind,’—*salmo eriox*, *salmo trutta*, *salmo albus*, &c. &c.,—lies a vast field, almost pathless, and thickly covered with an underwood of doubt and confusion. There are, perhaps, half dozen species or varieties, all of more or less different habits, and almost all having different names in different localities ;

besides which, the same name is often applied to different species; and the young and the adult are sometimes classed as two species, sometimes *vice versa*." Mr Russel does not pretend to know where the salmon *migrate* to, but his friend Mr Buist *does know*, and enlightens the public, in the year 1866, by publishing *The Stormontfield Piscicultural Experiments*, wherein he says it is not thought that the salmon's habitation in the sea is far away. "From certain glimpses which I have obtained, they probably go no farther than Lunan Bay, near Montrose, where I have received from strangers (who did not give their names, but who appeared to be connected with the fishings there) specimens of our marked smolts growing into grilse." From this the inference might be naturally drawn, that armies of thousands and tens of thousands of salmon rendezvous in Lunan Bay, where they throw up with their snouts fortifications similar to the famous lines of Torres Vedras, to protect themselves from their marine foes. Another writer, however, is just as confident that the salmon follow the herring, "upon whom they feed to a considerable extent; and as the latter periodically leave our shores for the polar seas, it may, with some probability, be concluded that the migratory abode of the salmon is in the same region." It is wonderful to see the strong grounds some men possess for excusing their attempts to overthrow the established course of nature's laws. To mutilate fish with impunity is the privilege of only a few, including

Mr Buist. "The only other plan, therefore, which we could adopt was *excision*, and the only part we could sever with safety to the fish, was the dead fin, as the part of the body which we thought the fish could spare without injury, and which we have proved was not renewed." Here "*we*" stands in direct antagonism to the Great Creator of all things, who thought *the fin was necessary*, but which Mr Buist and his friends think *unnecessary*. Mr Buist's opinions of fish are diverse. As has been already said, he held at one time the opinion that a parr was a distinct species of fish from the salmon. He fought with the Ettrick Shepherd on the point. In 1853, however, he was *entrusted with the Stormontfield breeding pond*. Then he nimbly changed his mind, and made parr salmon, and salmon parr. Mr Buist, in short, from that time became "Peter of the pools;" and Mr Shaw of Drumlanrig going hand-in-hand with him, expelled the midnight darkness which enveloped the natural history of the salmon. But was Mr Hogg free of the tergiversation exhibited by Mr Buist? No; he at one time held parr not to be the young of salmon, and was converted by Mr Scrope, and in turn that gentleman was converted by Mr Shaw of Drumlanrig; so there was a nice circumlocution jig among them. Mr Scrope writes,—“The late Mr James Hogg, the Ettrick Shepherd, was particularly stiff and bristly in opinion against me; but he recanted afterwards. I suppose it would have been better for my credit had I abstained

from any colloquy with the said James, which appears not to have been particularly entertaining ; for lately, upon asking my friend Sir Adam Ferguson if he recollected the circumstances, ‘Perfectly well,’ said he, ‘and it was at your own table ; but I cannot say who had the best of the argument, as I *fell asleep soon after it began.*’ ”

But to return to Mr Buist and his new publication in 1866, published by Edmonston & Douglas, Edinburgh. At page 26 appears the following letter, which deserves preservation for many reasons :—

SIR,—I sent you to-night by the Glasgow and South-Western Railway, from Lochwinnoch station, a parcel, carriage paid, and which I hope will be delivered to you to-morrow. It contains a very interesting fish, and one which I think will set at rest all the nonsense that has been written about salmon living in fresh water, without visiting the sea.

Four years ago I informed you that I had got from Stormont-field some salmon parr, which had not put on the smolt dress and gone down with the rest of the two-year-old migration. This is one of those fish. He is long enough to be three pounds weight, and he only weighs one pound, and yet has been in a pond where two-year-old grayling weigh three-quarters of a pound, showing that he had not suffered from want of feeding.

There may have been many instances of so-called parr being confined for years in fresh water, but I think this is the first well authenticated case of fish that were, beyond possibility of doubt, “salmon parr,” being kept confined to fresh water for six years. He was only killed to-day, at five o’clock, and ought to reach you in good time for testing his edible quality, which I expect will prove very poor.

I hope Mr Francis is at home, to see the fish ; if not, that you will submit it to some expert in fish, and have its weight, length,

and girth accurately chronicled, as I had not the opportunity of doing it before sending off.

GEORGE ANDERSON.

Western Club, Glasgow,

June 20.

[The length of the fish is fourteen and a-half inches, the largest girth six and a-half inches, and the weight fifteen ounces. The head, which is large enough for a five pound fish, is three and one eighth inches from the snout to the extremity of the operculum. The specimen is so remarkable a curiosity, that I could not decide upon testing its edible qualities, and have put him in spirits, and left him at the *Field* office for the inspection of the curious; and I beg to thank Mr Anderson very much for affording me an opportunity, which I have long desired, of seeing what sort of condition a fish so kept would be in.

FRANCIS FRANCIS.]

The reader will better peruse carefully the proof led in the Dunblane case before he falls in bondage to the face and fancy of Mr George Anderson; and particularly the notes of evidence in July 1870, taken in the Perth case, and reflect *on the facility with which different sorts of fish might be carried into the pond* when the river was so flooded as to run over the surface of the pond. It is more probable he had true parr and trout parr sent to him than "salmon parr." The "nonsense" is not all on one side "about salmon living in fresh water." Mr Anderson's premises are as weak as his conclusions; the matters he writes of are not as evident as mathematical principles. Mr Buist does not hesitate to print and publish that there was, by the Salmon Act of 1828, "destroyed *legally* more

breeding fish than by all the poachers put together." Then think of the sea-gulls—one being shot, there was taken out of its maw "upwards of fifty of our young fish." But the long-legged heron is equally cruel, for the keeper's gun having brought one down, which 'was "stalking about among the fry, and gobbling them up," he vomited, when dying, "fifty of our fry;" and, what is more lamentable still, "700 or 800 salmon eggs have been taken out of a trout's gullet in a morning." Anything more shameful can hardly be conceived, except the depredations of yellow trout, who are absolute gluttons. From the stomach of a yellow trout, "I have seen," says Mr Buist, "not fewer than ten full grown parrs cut out." Is Mr Buist so artless as to imagine that the Divine Creator has not provided for all that waste, although inscrutable to human eyes, and improbable to our imaginations?

There are by no means wanting, in the preparation of the different Scotch salmon statutes, signs of an hankering after the legislation which prevailed in the times of Charles I. and II., and of an equally undesirable spirit of arbitrary and restrictive measures directed against the community at large. All will remember the turmoil and afflictions which sprung out of these things in the reigns of these sovereigns, as recorded in history. Rivers, and tributary streams and lakes in Scotland, like rivers, and tributary streams and lakes in other countries, have natural boundaries. Fish have natural instincts, propensities

and habits, which should not be capriciously and wantonly interfered with. But we find power given by the Legislature to three private citizens of the state to circumscribe or extend the former by aid of geometry and mathematics, and full authority to the same quorum to endeavour to alter and change, if not to violate the natural instincts and habits of the latter, by driving them from their usual haunts into others which they may think more suitable, and that by the operations of the building art. The luxurious Romans in the palmy days of the Roman Empire were not behind the moderns in their desire to disturb the members of the finny tribe. A famous ancient author of that era appears to have thought that fishes could understand when aggression happened to be made on their privileges, for he writes, in reference to the voluptuousness of the age in which he lived,—“The fishes perceive the seas contracted, by the vast foundations that have been laid into the deep; hither numerous undertakers with their men, and lords disdainful of the land, send down mortar: but anxiety, and the threats of conscience, ascend by the same way as the possessor, nor does gloomy care depart from the brazen beaked galley, and she mounts behind the horsemen.”—(Third Book of the *Odes of Horace*—Ode I.)

In short, Parliament delegates its powers to three private persons, and declares that the acts and deeds which emanate from them in the form of “bye-laws,” which phrase includes “all rules, orders and regula-

tions made by the Commissioners," shall be equivalent to the Acts of Queen, Lords and Commons, and "shall be legally binding on all concerned." No doubt, to give a semblance of governmental sanction, the name of the Secretary of State is introduced, but the curious thing is, that while power is given to an aggrieved party to state objections to any bye-law, there is no machinery provided for *hearing and discussing*, either *privately* or in a *public manner*, these grievances before the Secretary of State. If that government functionary "approve or alter, or disapprove of the same," *i.e.* the bye-law, and publish it in the *Edinburgh Gazette*, the work is complete. The bye-laws so dealt with are declared "legal and binding on all concerned." Is there much difference in fact and principle betwixt that method and the orders in council which were so prolific in the times of Charles I. and II.? There is no safeguard against passion, or precipitation, or prejudice; and few people will doubt that these often times lead to error and mischief. Hooker writes,— "Human laws are measures in respect of men, whose actions they must direct; howbeit such measures they are, as have also their higher rules to be measured by, which rules are two, the law of God, and the law of nature. So that laws human must be made according to the general laws of nature, and without contradiction unto any positive law in scripture; otherwise they are ill made."—*Ecclesiastical Polity*. Hanbury's edition, book iii., sec. 9th, vol. 1st, p.233. Again,

has the principal secretary of state of these realms so much leisure from more important and arduous duties as to effectually supervise what these the private individuals, with no official or legal responsibilities, may concoct in the privacy of their closets? If he has not leisure, the work must be handed over to some subordinate government official, and such a course would make matters more dangerous still. The commissioners are Mr Ffennell, Mr Eden, and Mr Leslie. They were nominated in terms of the Salmon Act 1862, (a statute, by-the-bye, which seems to have been strangely ill framed, as may be seen from section 42 of 31 & 32 Vict., cap. 123, "So much of the twenty-second section of the Salmon Fisheries (Scotland) Act 1862, as confers on District Boards the power 'to make and alter from time to time regulations for the preservation of the fisheries in the district,' and the twenty-fifth section of that Act, are hereby repealed,") and their appointment was renewed, and their powers continued, by the Acts 26 & 27 Vict., cap. 50; 27 & 28 Vict., cap. 118; and 28 & 29 Vict., cap. 119. Was the work speedily done which was assigned them, or was it easy? We may form some notion from these facts. The bye-laws fixing the limits of each district, and the bye-laws fixing the boundry on each river, between upper and lower proprietors, were to be issued before 1st January 1863, (sec. 15); and the bye-laws on other matters were to be issued before 1st January 1864, (sec. 16). The period was extended, as regards

the latter class of bye-laws, till 1st January 1865, (26 & 27 Vict., cap. 50, sec. 1); and again extended as regards both classes of bye-laws till the 1st January 1866, (27 & 28 Vict., cap. 118, sec. 1); and again extended as regards both clauses of bye-laws till the 1st January 1867, (28 & 29 Vict., cap. 119).

As has been already observed, there were a great many amendments of the salmon statutes; and now we see a great many extensions of the original periods designed for making bye-laws. In the one, it is, amend! amend! amend! In the other, extend! extend! extend!

If any reader of this publication wishes to know what salmon cases have been discussed and decided in the Court of Session, they will find such information in a book, written by Charles Stewart, Esq., advocate, Edinburgh, entitled, *A Treatise on the Law of Scotland relating to Rights of Fishing*, and published by Messrs T. & T. Clark, law publishers, 38 George Street, Edinburgh. The book was written *subsequent* to the passing of the Scotch Salmon Statute, 1862, and *prior* to the passing of the last Scotch Salmon Statute, 1868—indeed, the volume informs the public that the author had not an opportunity of making an analysis of the statute of 1868.

The salmon proper being disposed of, along with parr, a few observations may be made on the Legislature's protection of trout. There is a statute, 8 & 9

Vict., cap. 26, dated the 30th June 1845, which deals with "trout and other fresh water fish." It has its odd points. It is directed against persons fishing with "nets" to catch trout. Section 4 appears as if Hogg, the Ettrick Shepherd, had prepared it. "And be it enacted, That it shall be lawful for any person, without any warrant or other authority than this Act, *brevi manu*, to seize and detain any person who shall be found committing any offence against this Act, and to carry such person before the Sheriff, or any Justice of Peace," &c. There is a decided relish for *brevi manu* work, for the salmon statute 1868; 31 and 32 Vict., cap. 123, sec. 29, is couched in precisely the same terms. The *carrying* process would not be very easy,—it would assuredly procure the carrier more cuffs than halfpence. The Duke of Albany, brother of King James III., when he and his servant escaped from Edinburgh Castle, undertook a good load, for he hoisted his servant with a broken leg on his shoulders, and carried him down to Leith ; but few persons would be disposed to carry a poacher of fish in that fashion. Probably before the carrying time arrived both combatants would be *hors de combat*, as the French say, and the half of the penalties and forfeitures going to the prosecutor would be dearly earned ; or, to use Shepherd Hogg's loveable Latin phrase, it might be "*veecy versa*." It is trusted Mr Russel will not be "skunnered" at the unusual Latin pronunciation. The Shepherd himself was wont "to defie ony man to

skunner him frae his denner," especially when the feast was in the celebrated Mr Ambrose's Inn, in Edinburgh. In this resolution he showed his good sense. Section 6 provides that proof of the offence shall be "the oath of one credible witness or more," and without any written pleadings or record of "evidence," conviction may follow. Section 7 gives power to the aggrieved party to appeal to the Circuit Court, but how there can be an *effectual* appeal without any pleadings or record of evidence extant, it is not easy to understand. Section 10 is very comprehensive as to the *locus*—"river, water, or loch," *includes* "any stream, burn, mill-pool, mill-lead, mill-dam, sluice, pond, cut, canal, and aqueduct, and every other collection or run of water in which trouts and other fresh water fish breed, haunt, or are found and preserved;" and what is more astonishing, as being quite destructive of English grammar, "the singular shall include the plural number, and words importing the plural number shall include the singular;" and to destroy the laws of nature it is enacted, words "importing the masculine gender shall include females;" and section 12 provides for amending or repealing the Act. It was not long of being amended—just fifteen years after. Then was enacted 23 and 24 Vict., cap. 45. The date is 23d July, 1860. The preamble bears—"Whereas by the 8 and 9 Vict., cap. 26, entitled an Act to prevent fishing for trout or other fresh water fish by nets in the rivers and waters in Scotland, pro-

vision is made for preventing the destruction of trout and other fresh water fish by nets in the rivers, waters, and lochs of Scotland : And whereas there are various other ways by which trout and other fresh water fish may be destroyed which have not yet been declared illegal, Be it therefore enacted," &c. Then comes a specification of the methods of destruction *not hitherto* declared illegal. They are these,—“double rod fishing,” or “cross line fishing,” or “set lines,” or “other fishing,” or “burning the water,” or “by striking the fish with an instrument,” or “by pointing,” or “to put into the water lime,” or “any other substance destructive to trout or other fresh water fish, with intent to destroy the same.” The penalty is a sum not exceeding £5, with forfeiture of the instrument and fish. The prosecution must be instituted within *three* months after the offence, (sec. 8), while the previous statute enacted that no prosecution was to be recognised after six calendar months, (sec. 9). But the fish do not seem to have much protection, notwithstanding, from double rods, &c., when used in the hands of certain favoured classes of men, “Provided that nothing in this Act contained shall prevent any person having the right to fish in any river, water or loch in Scotland, or any person having permission from such person, from exercising the right of fishing in such river, water or loch in any mode not prohibited by law prior to the passing of this Act,” (sec. 1). Moreover, it is well known that thousands of school boys, in the summer

season, tuck up their trousers, shirt sleeves, wade along burns, mill-leads, and every other small collection of running streams, and push their hands and arms under banks, and so capture both trout and parr by seizing them with their fingers. Then water spaniels are often taught to search for and seize trout in shallow waters, such as burns and mill-leads, &c. Indeed the Newfoundland dog appears to have a natural instinct for hunting salmon, as may be seen by turning to pages 24 and 25 of vol. ii. of *Cassell's Natural History*. Then Mr C. Stewart, in his new publication, published in 1871 by Adam & Charles Black, Edinburgh, entitled, *A Caution to Anglers*, does not hesitate to impute the alleged scarcity of trout to the rapacity of anglers themselves,—see his pages 52, 53, 54, 55, and 56. His views are extravagant: that is seen in his unapt similitude of land growing only a certain quantity of grain, or maintaining a certain number of cattle or sheep. The habits and feeding of the denizens of the “subaqueous residence” are by no means so visible. A “close time” he thinks is the cure for all evils; and to accomplish that desired end he would make it unlawful and penal to fish for and catch certain fish in the Clyde, which he himself admits do not fall within his “close time,” *i.e.*, “roundly, from the middle of October to the middle of March.”

Scotland, it is stated, is divided into 120 fishing districts under the present laws; but what is very curious is, that up to the year 1870 there were not

above thirty District Boards constituted and working. Again, to a certain query put by Messrs Buckland and Young as to whether the recent Scotch Salmon Acts were capable of improvement, sixty-one answers are in the affirmative, and only two in the negative.

There are some points adverted to in the previous pages which for the sake of more clearly understanding it is thought desirable to gather together, that the reader may have them all at once under his eye.

- 1.—There are the general authorities quoted from *Cassell's Natural History*, a new and very recent work, at the commencement of this publication, showing that persons well qualified to judge have pronounced parr to be a distinct and different species of fish from the *salmo salar*.
- 2.—There is the evidence on oath of John Bayne, builder, Dunblane, an angler of thirty or thirty-five years' experience, swearing he "has found parr during the whole season;" that "the parr is not of the same make as the grilse; the parr is larger in the head;" that he "has found row in the female and milt in the male;" that "the smolt's head is longer than the parr's, its mouth is much more tender than the parr's;" and much more to be found in his deposition. James Brown, gardener, Dunblane, an angler of forty-eight years' experience, swears,—“I have ripped up both parr and smolt. I have found milt and roe in the parr;" that "a parr is neither trout nor salmon." David Ferguson, Doune, an angler of fifty years' experience, swears,—“The parrs are plenty in

all seasons." David Bayne, joiner, Dunblane, an angler of twenty years' experience, swears,—“ I have killed parr in the Allan with milt and roe in them ;” that “ I caught two female parrs to-day, and found roe in them.” John M'Laren, fishmonger, Auchterarder, swears,—“ I have been a fisher since I was able to fish ;” that “ I have caught parr often, and know them well ;” that “ I have found parr in the Rannoch in abundance the same as I have found in the Teith, and I found plenty of them in all the streams thereabout. I have seen smolt often, but they are not like these.” James King, watchman on the Allan, an angler of thirty years' experience,—“ I think the parr is a different species from the smolt: the fins of a smolt are blue, the parr's yellow.” Thomas Allan, residing in Stirling, swears,—“ I know parr from smolt when I see them. I remember my brother and a young man bringing home three smolts and two parrs and putting them into a spring well where they could not get out. The smolts grew rapidly, and died in about six weeks.” John Hunt, Dunblane,—“ Knows Bruce's well. I got two parrs from the Allan and put them in it. One of them remained there five years. I watched all these five years, and it remained a parr all the time.” Peter Speedie, Dunblane, confirms this. James Anderson, Dunblane, an angler of forty years' experience, knows parr ; “ have examined parr, and found roe and milt in them.” James Wingate Johnston, deputy-inspector of hospitals, and presently residing at Bridge of Allan,

swears,—“I am a physician. I, along with Dr Paterson, made an anatomical examination of two grilse and three parrs—a male and female grilse, and one of each sex of the parr. The spinal column of each grilse had fifty-six vertebræ; the parrs had fifty-nine. The bones were fully developed in both species. They appeared to be different fish decidedly. The milt in the grilse was well expressed; as also in the parr—not to the same extent. I consider the parr as fully arrived at maturity, as they had organs fit for producing,”—and much more to be found in the deposition itself. Dr Paterson, Bridge of Allan, confirms Dr Johnston, and in answer to the presiding Judge said,—“The parr’s head is more of a bull head than the smolt’s, and is also different from the head of the grilse. It is against all rule of nature that this difference would ever disappear,”—and much more to be found in the deposition itself. 3.—There were, by the testimony of Peter Marshall, no sufficient safe-guards at the Stormontfield ponds to prevent pure parr and trout of all sorts being put into it, and breeding therein; and in his examination in 1870 he disclosed the important fact that the pond was liable to be flooded by the river occasionally; moreover, the pond was not in a satisfactory state, even by Mr Buist’s testimony, until 1866, when he got a “lying-in hospital,” and other works erected under the superintendence of Mr Ritchie, civil engineer.—(*The Stormontfield Piscicultural Experiments*, in 1853, published in 1866 by

Robert Buist, p. 13). 4.—Mr Yarrel, in his book, vol. ii., p. 46, uses these words in connection with the parr, "In the markings they are so distinct as to be at once separated from trout by any observer. The row of blue marks which also is found in young trout and the young of several of the salmonidæ, in the parr are narrower and more lengthened. The general spotting seldom extends below the lateral line, and two dark spots on the gill cover are a very constant mark. On a still closer comparison between the young trout and the parr of smaller size, the following distinctions present themselves:—The parr is altogether more delicately formed—the nose is blunter, and the tail more forked; but the chief external distinction is in the immense comparative power of the pectoral fin. It is larger, much more muscular, and nearly one-third broader; and we at once see the necessity for this great power when we consider that they serve to assist in almost constantly suspending this little fish in the most rapid streams. The scales of the parr, taken from the lateral line below the dorsal fin, were altogether larger; the length greater by nearly one-third; the furrowing more delicate, and the form of the canal not so apparent or so strongly marked towards the basal end of the skull." 5.—Dr Heysham of Carlisle, in 1826, appears to have made a minute anatomical examination of the parr, similar in many respects to Dr James Wingate Johnston's and Dr Paterson's in the year 1858. The words used by him are,—“The

opercule forming the outer edge of the gill cover is much more round than in the trout,—approaching in this respect to the salmon. In the trout, the lower angle is decidedly angular. The *inter opercule* in the parr is longer and narrower. The *maxillary* bone is broader at the posterior corner, but much shorter in the parr. The *vomer* is much weaker. The bones or rays of the gill cover are longer, and much narrower, than those of the trout. The teething of the parr is weaker. The bones of the tongue longer, weaker, and not so broad, and the under jaw much weaker, and the distance between its *rami* in the parr about one-third less.” The names of the bones, it is mentioned, are taken from the osteological work of Cuvier. 6.—Sir William Jardine distinctly states that the parr has no connection whatever with the migratory salmon, and adds, “I have no hesitation in considering the parr not only a distinct, but one of the best and most consistently marked species we have, and that it ought to remain in our system as the *salmo samulus* of Ray.” He gives information, also, for the easiest way of distinguishing, to persons who have not inclination and leisure to dissect them—1, the great size of the pectoral fin; 2, the shortness of the maxillary bone, and, consequently, the diminutive gap compared with the same sized trout, and the breadth between the *rami* of the lower jaw. The Duchess and Countess of Sutherland permitted Sir William, Mr Selby, Dr Greville, Mr James Wilson, and Mr John Jardine, Sir

William's brother, to make a complete examination of her ladyship's fishing streams, and the substance of the examination, so far as the parr and salmon are concerned, is given above. Any one who has vacant time, and desire, may read a paper of Sir William Jardine's in the *Edinburgh Philosophical Society's Transactions* for January 1835. 7.—Parr is a deadly lure for large trout, and is so recommended by Mr Stoddard—by Mr Scrope,—by Mr Russel,—by Mr Stewart,—and other writers on angling. It is not a question about killing parr; but the question is—What select coterie of private individuals shall have a statutory right to kill them to increase their own amusement, sport, and profit, to the entire exclusion of the community at large, and particularly those humble members of it to whom a few small fish for dinner, or even breakfast, (as the Ettrick Shepherd used them), would be most acceptable. Mr Bertram is very cautious; he eschews the name parr for baiting the hook, and in its stead uses "little trout." He is also rather misty at page 183 of his book, about "a very eminent naturalist" who held certain opinions about parr at "one time," implying thereby that he *now* holds different views; but he does not venture to say that in so many specific words. He might have been more simple, and just have told his readers that the eminent naturalist was Sir William Jardine, which is the fact, and that that gentleman has not changed his opinion—at least Mr Bertram has given no evi-

dence of it; it suits him better to ride in the same coach with Mr Buist and Mr Hogg, the latter of whom, by his story, "suspected *all his life* parr were salmon," (p. 184), although Mr Scrope converted Mr Hogg from parr to salmon. Probably Mr Hogg was, before his conversion, one of the "few wrong-headed people (p. 187) whom Mr Bertram has in his eye. Mr Marshall, however, with whom Mr Bertram *compared notes*, is an enlightened man on the parr question, (p. 195). "The root of the evil as regards the scarcity of salmon," Mr Bertram thinks "is to be found in the avarice of the lessees of fisheries, who have over-fished the rivers to an alarming extent," (p. 200); and Mr Bertram, after putting the question to himself: "The parr and smolt are protected—Why?" answers: "Because they are the young of the salmon;" therefore grilse being also "the young of the salmon, are sadly in want of protection too," (p. 208). It is very doubtful if Mr Buist merits the encomiums Mr Bertram bestows on him for "accurate experiments conducted under his own personal superintendence," because we have Mr Buist himself relating an important point in this manner:—"When the strong instinct comes on them (that is the smolts) for departure from the pond, they seem to be seized with an extraordinary impulse, and, *from what the keeper states*, they muster in divisions, which go off daily. They first swim round the pond, and then dart over the edge of it into the trough which leads to the river." This is hearsay evidence,

not ocular. (Page 19, the *Stormontfield Experiments*). And again,—“As soon, therefore, as the *keeper thought* the new pond ready he ran the parrs into it; but unfortunately it turned out that this was done rather prematurely, the embankment not being then properly consolidated.” This is *superintendence* with a vengeance, great and manifold. Mr Bertram further writes, page 182,—“It is curious that although the fish (the parr) was declared over and over again to be a separate species, no one ever found a female parr containing roe.” It is singular he never heard of the Dunblane case, and the proof there led, which happened in the year 1858, while his book entitled, *The Harvest of the Sea*, was published long subsequently, on the 18th October, 1865. 8.—We now come to notice particularly Mr Anderson’s letter, quoted at length in a previous page. The worth of that document depends on several circumstances, the authenticity of which are not apparent in themselves; and, so far as appears, no steps to establish their authority were ever taken. The writer assumes that the Stormontfield pond was as it were hermetically sealed to all but Mr Buist the superintendent, and Mr Marshall the keeper. It also assumes it was perfect in its construction, and kept so. So far from this, Mr Buist himself, in 1866, writes that “the old breeding boxes formed in 1853 having become totally rotten, have now been removed, and an entirely new set, on an improved plan, and of a more durable wood, erected under the able superintendence

of Mr Ritchie, civil engineer." (p. 12.) What benefits accrue from that? Mr Buist himself shall answer the question. He writes again,—“Thus mud, the seeds of other fish, and of insects, are prevented from getting into where the salmon eggs are deposited, or to the fry after they are hatched,” (p. 13). Surely the natural conclusion to be drawn from these words is that the seeds of other fish, insects, &c., gained admission to the *old* pond. But there are some curious additions to be made. Mr Marshall, in his examination on oath in July 1870, distinctly swore that he had a pike, yellow trout, and minnow in the Stormontfield pond. Not only so, but he swore also that the river Tay sometimes overflowed into the pond. The yellow trout is a perfect gormandizer of salmon fry, a fact Mr Buist himself relates, so that it was very inconsistent in the keeper, Mr Marshall, to allow such a tenant to eat “boiled liver rubbed small.” Mr Anderson sends to the *Field* newspaper what he is pleased to call “some salmon parr which had not put on the smolt dress.” Where is the evidence to be found that the fish were “salmon parr?” More likely, from the experimental results, they were true parr, trout or trout parr. But Mr Anderson in a jubilant mood writes,—“I think this is the first well authenticated case of fish that were beyond possibility of doubt ‘salmon parr,’ being kept confined to fresh water for *six* years.” He is like a man who runs before his horse to market. Where is the proof of the “first well authenticated case?”

There is no genuineness in the matter, which is the thing complained of. There is no proof even that the said fish, whatever may have been their species, were confined six years in a pond. But for the sake of argument it shall be assumed that that particular fish sent to the editor of the *Field* newspaper had been confined six years in fresh water. How is it reconcilable with the following fact, related by Mr Buist in his work, page 20,—“It has been found that (a salmon parr) if kept in a pond whence there was no egress, the smolts would throw themselves out of the water, and die on the banks.” If Mr Anderson’s fish had really been “salmon parr,” then in the course of time and nature they became “smolts;” but the strange part of the story is, that the fish he experimented with never became smolts at all—at least not that one sent to the *Field*. If, too, they had become “smolts,” they would have thrown themselves out of the water, and died on the banks of the pond, being “seized with an extraordinary impulse,” like that described by Mr Marshall to Mr Buist. Then we have the testimony of a man on oath in a law court that he saw three smolts and two parrs put into a spring well, where the smolts, after growing rapidly, died in about six weeks, while it was sworn to that one of the parrs lived five years in the well. The fair conclusion from all these things is, that the editor of the *Field* had received pure well defined parr, trout or trout parr. Fortunately Mr Francis, instead of cooking and eating

the fish as desired, added a *notandum* to his letter, which bears no reference to the fish being salmon parr, or exhibiting any exterior tokens of a smolt, or verging to it. He does not commit himself either by saying that in his opinion it is a specimen of the true young of the *salmo salar*. He studiously avoids describing the species, and uses the generical term fish. If it might be possible to tinge the minds of the legislators of the present day with the feelings and sentiments of one of former times—no doubt on a different subject—there might arise some hopes of oil being thrown on the troubled waters of fish life. Burke, when discussing the question of a legislative power to impose taxes spoke, *inter alia*, as follows:—"I do not examine, whether the giving away a man's money be a power excepted and reserved out of the general trust of government; and how far all mankind, in all forms of polity, are entitled to an exercise of that right by the charter of nature. Or whether, on the contrary, a right of taxation is necessarily involved in the general principles of legislation, and inseparable from the ordinary supreme power. These are deep questions, where great names militate against each other; where reason is perplexed; and an appeal to authorities only thickens the confusion. For high and reverend authorities lift up their heads on both sides; and there is no sure footing in the middle. This point is *the great Serbonian bog, betwixt Damietta and Mount Casius old, where armies whole have sunk*. I do not intend to

be overwhelmed in that bog, though in such respectable company. The question with me is, not whether you have a right to render your people miserable, but whether it is not your interest to make them happy. It is not what a lawyer tells me I *may* do, but what humanity, reason, and justice tell me I ought to do. Is a politick act the worse for being a generous one? Is no concession proper but that which is made from your want of right to keep what you grant? Or does it lessen the grace and dignity of relaxing in the exercise of an odious claim, because you have your evidence room full of titles, and your magazines stuffed with arms to enforce them? What signify all those titles and all those arms? Of what avail are they, when the reason of the thing tells me, that the assertion of my title is the loss of my suit; and that I could do nothing but wound myself by the use of my own weapons?"

There is not one word said in this publication, or meant to be said, either in jest or earnest, against the fair and proper pursuit of legitimate pisciculture,—it is illegitimate pisciculture, loaded with all sorts of mephitical excrescences, which provokes adverse commentary. Nor is there the slightest disposition to encourage or justify any illegal measures in fishing. It is, however, an undoubted truth, that one extreme begets another. There has been arbitrary, unwise, and indiscriminate classification of fish, and unwise and harsh measures of repression, and these in turn

breed recklessness and violence in the acts of certain portions of the population, who conceive they have been needlessly deprived of an harmless amusement in fishing for parr.

Let every river and running stream, and loch and pond in Scotland, be well stocked with all kinds of fish, but do not confine the benefits thence accruing to a few favoured people. Has the strict preservation of salmon put that fish within the reach of any one except those who can go to market with well filled purses? Whether such statistics as Mr Buist furnishes may account for high prices, is worthy of consideration. "Taking," says he, "the whole Tay fishings together, the rental has progressively increased from £7,973 in 1852, to £14,080 in 1862, and in 1865 to £17,618." Of course, to get these rentals, the screw is applied to the lessees by the lessors, and in turn the lessees apply the screw to the purchaser's pocket. No one knows this better than Mr Buist, who, many years ago, had a lease of salmon fishing in Lunan Bay and its neighbourhood; also a lease of salmon fishings on both sides of the Linn of Campsie; the two fishings at the Muirton—these latter comprising four stations. What was the produce?—"Upon all which four stations, 539 salmon and grilse were captured in *three* or *four* days in 1835, which were fully as many as were got in 1863, during the same space of time, and about the same dates. On comparing notes, I find that I obtained

better prices in 1835 than were obtained in 1863." The prices in 1863 were not less than two shillings per pound, and sometimes more, so that in 1835 Mr Buist must have been making hay while the sun shone. His opinion of the bull trout coincides with Mr Hogg's — "There is a coarse fish of the salmon kind, called by our fishers a bull trout." Hence the necessity of at once stopping the system of capriciously classing every sort of fish as the young of the salmon, or "migratory fish of the salmon kind." It may suit Mr Buist's purpose to have everything like the Tay system, and to condemn the work of every man when compared with his own. "I may be permitted to say, that from what I observe, parties who are attempting the artificial propagation of salmon on other rivers, appear to be proceeding according to totally wrong principles. They seem to think that all is right if they bring the fry to the swimming state, and then they turn them into the river. But there the young fish will be exposed to a host of enemies, and I fear that few, indeed, ever get to sea at all." There can be no doubt, however, notwithstanding Mr Buist's notions and fears, that they get to Lunan Bay ultimately. The newly hatched fish so dealt with by other parties besides Mr Buist, had their umbilical bags absorbed, and were in a fine swimming state, and really could take care of themselves. Such fish will, on being turned into the parent stream, dive down into the deep pools and caverns which abound in all rivers,

and will be completely beyond the reach of "sea-gulls" and "long-legged herons," which infest the Stormont-field pond. There is a view of this question which deserves consideration. If there is a distinct species of fish called parrs, (which seemingly there is no doubt of), then by the Acts of Parliament these are protected from capture from one end of the year to the other. They never become smolts or salmon. They will swarm in all rivers and streams, and they will consume the eggs of salmon to an incalculable extent.

From an article on "Scotch Salmon" in the *Times* newspaper of the 10th November, 1870, the autumn floods "brought up an immense quantity of fish." Again it is said,—“From the Tay district we learn that both loch and river have yielded an extraordinary number of large fish this year.” “Salmon ranging from 26 lb. to 30 lb. have been very numerous, while the capture of salmon weighing upwards of 50 lb. has not by any means been an uncommon occurrence.” Surely Mr Buist must be delighted with such news if he did not write the article himself. But in case he has not seen the article, another short quotation will be made. “In Mr Buckland’s Museum of Economic Fish Culture, at South Kensington, there is a cast of a salmon which was caught in the nets below Newburgh in June last, (1870) which turned the scale at 70 lb.” This giant, fed with “boiled liver rubbed small,” likely died from pure love to his benefactor at the Stormontfield ponds. A certain author writes,

love slights death, and he goes on to say,—“After Otho the Emperor had slain himself, pity (which is the tenderest of affections,) provoked many to die out of mere compassion to their sovereign, and as the truest sort of followers.” The foresaid article gives good accounts also of the Tweed, river Forth, Dee, Don, Spey, Ness, Nith, so the “Ross-shire Laird’s” conscience is rather more tender in not setting fire to all the salmon rivers than Mr Russel would be disposed to believe. The proprietors of coal pits pumping into rivers water of the colour of blood; manufacturing works on the banks of the Clyde doing the same, and the pouring sewage of towns into the different rivers, kill vast quantities of fish; but then, in the language of Mr Buist, “to leave everything to the operations of nature, as some philosophers contend, is just about as reasonable as to say that we ought to leave our fields to sow themselves. Such a doctrine is utterly unworthy of these days of stupendous progress in science and art,” (p. 7). * * * * “It is, I must repeat, a most absurd thing to say that nature should be left to herself as regards the rivers. I was not a little astonished to find the learned Dr Gray propounded such a doctrine at the late meeting of the British Association in Bristol.” It was quite “heretical” of Dr Gray to say any such thing,—it was “non-sense,” and he forgot that these are the days of extensive adulteration of food and drink, of false weights and measures, and many other social evils of great

magnitude, found side by side with "these days of stupendous progress in science and art." Mr Buist, however, should not decry nature so vehemently. If the Stormontfield pond can breed a seventy pound salmon, so can *nature*. The following interesting article of intelligence appeared in one of the London Journals, 16th April, 1789—"The largest salmon ever caught was yesterday brought to London. This extraordinary fish measures upwards of four feet from the point of the nose to the extremity of the tail, and three feet round the thickest part of the body. Its weight was 70 lbs. within a few ounces. The fishmonger in the Minories cut it up at one shilling per pound, and the whole was sold almost immediately." And another instance of the same sort occurred with a Mr Groves, fishmonger, Bond Street, London, who, in 1821, had in his shop a salmon which weighed 83 lbs. These examples fully justify Dr Gray's confidence in the efficacy of nature. There were no Stormontfield ponds in those days, nor any contrivances like them.

It is to be wished that the anglers of the present times were like some anglers of former days. Dr Nowel, Dean of St Paul's, was a great angler, and usually bestowed the most of his fish amongst the poor who inhabited near to those rivers in which the fish were caught.

I close this work with part of the original preface which Izaak Walton appended to his book, containing as it does very much the sentiments of the author of

the present volume,—“I wish the reader also to take notice, that in writing of it I have made myself a recreation of a recreation, and that it might prove so to him, and not read dull and tedious, I have in several places mixed, not any scurrility but some innocent harmless mirth, of which, if thou be a severe, sour-complexioned man, then I here disallow thee to be a competent judge.”

ADDENDA.

While this publication was passing through the press (in July 1871), a complaint under the Salmon Fisheries Act, 1868, was directed against a boy of fifteen or sixteen years of age, by Mr Napier, superintendent of the Forth Salmon Fisheries, charging him with taking *one* parr from the Teith on 24th June 1871. The boy had been angling for amusement and recreation. While the learned Sheriff felt himself constrained to convict under the statute, he expressed regret that he should have had to do so. The boy was fined one shilling, and subjected in ten shillings of expenses, failing payment of which, three days imprisonment; and his rod and tackle were declared forfeited. A similar case, it is said, occurred about five years ago to a young boy of eleven or twelve years of

age, son of a lawyer in Edinburgh, who, being in the neighbourhood of Kelso, was amusing himself fishing in a stream in that locality, and having caught a parr, he was laid hold of, his rod and tackle seized, himself prosecuted in court and fined, &c. He was an invalid, and had therefore need of healthful recreation without being molested and frightened.

These and such like cases are practical and significant illustrations of the hardships entailed, and to be entailed, on the community by the operation of the present Scotch Salmon Statutes.





